Gangai Vinayagar Temple & Anr vs Meenakshi Ammal & Ors on 9 October, 2014

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.4227 OF 2003

SRI GANGAI VINAYAGAR TEMPLE & ANR. .…..APPELLANTS

Versus

MEENAKSHI AMMAL & ORS. …..RESPONDENTS

J U D G M E N T

VIKRAMAJIT SEN, J.

1. A maze of facts and events, and a labyrinth of legal conundrums confront us in the course of the determination of this Appeal. Essentially, it is the ambit and sweep of the principle of res judicata that is at the centre of controversy. Additionally, Order II Rule 2 of the Code of Civil Procedure ("CPC" for brevity), which enshrines but another complexion of res judicata, also requires to be cogitated upon. The contention of the Appellant through its Trustees (hereafter referred to as 'Trust') is that the Respondents/Tenants ('Tenants' for brevity) of the demised property are barred by the principle of res judicata from challenging the findings of the Trial Court especially the Trust's ownership of the demised property, since the said Tenants have filed only one appeal, i.e. arising from O.S.6/78, without assailing identical conclusions arrived at by the Trial Court in O.S.5/78 and O.S.7/78.

2. The uncontroverted facts are that the husband of the first Respondent/Tenants (namely, Kannaiya Chettiar along with another person Venkatarama Keddiar) the suit land on lease from Sethurama Chettiar on 1.3.1953 for a period of 12 years on a monthly rent of Rs.150/-. The Tenants were permitted to construct a cinema theatre on the suit land at their own cost, which they have done in the name and style of 'Raja Talkies', which is still in existence. In 1959 one of the partners died, resulting in the husband of Respondent No.1 assuming sole proprietorship of 'Raja Talkies'. On 8.11.1967 a fresh Registered Notaire Lease Deed was executed for a period of 15 years commencing from 1.1.1968 between the husband of Respondent No.1 and the Appellant Trust, Gangai Vinayagar Temple through its Trustee's President namely, Shri Sethurama Chettiar. Consequent on the death of the husband of Respondent No.1, she continued as the tenant along with her children as legal representatives of her late husband. It is also not in dispute that the Trust sold the suit property to Sarvashri P.Lakshamanan, P.Vadivelu and P.Saibabha who were impleaded by the Tenants as Defendants 7 to 9 in O.S. 5/78. The Tenants were informed of this transaction on 14.10.1976, calling upon them to attorn to the new owners. The repercussion was that in 1976 itself, the Tenants filed O.S.5/78 (re-numbered) in which they had assailed the sale of the suit land on the predication that the legal formalities necessary for the transfer of trust property had not been adhered to as it was a Public Trust, and further that, subsequent to the aforementioned transaction, the Tenants (Plaintiffs in O.S.5/78) apprehended their dispossession therefrom at the hands of the Defendants, including Defendants 7 to 9 (hereinafter called 'Transferees'). The Prayers have been reproduced infra. In this suit, the Trust as well as the Transferees pleaded in their respective Written Statements that they had neither threatened nor harboured any intention to dispossess the Tenants without due process of law.

3. The sequel of this first salvo of litigation was the filing of two suits by the Trust, being O.S.6/78 and O.S.7/78, claiming arrears of rent from the Tenants (Respondent Nos. 1 to 6 before us, in which the Transferees were not impleaded) pertaining to the period prior to the transfer of the suit lands by them to the Transferees. Despite the pleadings therein as mentioned above, O.S.5/78 came to be 'dismissed'. O.S.6/78 was partially decreed; whilst O.S.7/78 was dismissed on the ground that the alleged claim of arrears of rent in this suit was not tenable as the said land was part of and encompassed in the suit land which was the subject matter of O.S.6/78 and, accordingly, the claim was covered and subsumed therein. The Tenants have not filed any appeal in respect of O.S.5/78 and O.S.7/78; and the Trust has not filed any appeal on the dismissal of their suit O.S.7/78. All three suits have been decided, after recording of common evidence, by a common Judgment passed on 6.11.1982 by the Court of 2nd Additional District Judge at Pondicherry. Pursuant to this Judgment three different decrees have been drawn.

4. The prayers contained in O.S.5/78 read as follows:

> (i) Establishing the leasehold right of the plaintiffs and to be in possession of the schedule mentioned property till the end of the lease period viz. 1-1-1983; and For permanent injunction restraining the defendants, their agents, servants and other representatives from interfering with the plaintiff's peaceful possession and enjoyment of the suit property till 1-1-1983.

Directing the defendants to pay to the plaintiff the costs of the suit; and Grant such other relief as this Honourable court may be pleased to order in the circumstances of the case.

It is noteworthy that the Trust had not pressed for the framing of an Issue predicated on Section 116 of the Evidence Act. In the plaint in O.S.5/78, the Tenant had pleaded that the Defendants "have no right to sell the property as the same is Trust property belonging to the 1st Defendant and as such the alienation would be totally void being a breach of trust..... The alienation in favour of the Defendants 7 to 9 being void, they have no title to the property..... The cause of action arose on 30.6.1976 when Defendants 2 to 6 purported to convey the suit property to Defendants 7 to 9 and, thereafter, when Defendants are threatening to disturb the plaintiffs possession." Despite the specificity of these pleadings the Tenants had ostensibly not prayed for any relief with regard to the title of the Transferee. Nevertheless, on careful consideration it appears to us that, awkwardly worded though it avowedly is, the first prayer endeavours to articulate this very prayer. In any event, the pleadings are sufficient to lay the foundations for the assumption that the Tenants were desirous of assailing the transfer of the title of the land. That being the position, the embargo of Order II Rule 2 CPC would become operative against the Tenants. The Issue relevant for the present purposes (the burden of proof of which was set on the Tenants) reads thus:-

> (2) Whether the suit property is not the personal property of Sethurama Chettier and whether the plaintiffs are not estopped from questioning the title of the landlord or his vendors.

We hasten to clarify that had the Tenants (in O.S. 5/78) merely expressed a fear or apprehension of dispossession at the hands of the persons that had been arrayed as defendants, either collectively or individually, without touching upon the legal character of the suit property as well as the legal propriety and capacity of Trust (Defendants 2 to 6) to transfer it to the Transferees (Defendants 7 to 9), Order II Rule 2 would not had been attracted. These questions could then have been subsequently raised in the event the new owners, namely, Defendants 7 to 9 were to bring any action or claim before a court of law against the Tenants. It is for this reason that we are unable to agree with the determination of the Division Bench in the Impugned Order that this Issue was not central to Suit O.S.5/78 and that, therefore, res judicata did not apply despite the failure of the Tenants to appeal against the verdict in O.S.5/78. We cannot sustain the order of 'dismissal' of the Suit O.S.5/78 nay even the necessity of conducting a trial in that lis in the wake of the Defendants' averments in their Written Statement. Ergo, it seems to us that an appeal therefrom was essential. We also think it to be extremely relevant that the Tenants did not assail the judgment and decree in O.S.7/78 since it was reiterated therein that the Trust was the private property of Sethuram Chettiar. This finding has therefore attained finality, both in O.S.5/78 and O.S.7/78, which thereupon assumed the character the "former suit". Since the Trust had also not filed an appeal against O.S.7/78 res judicata became operative against it on two aspects – firstly that there were two tenancies and secondly that any arrears of rent had separately accrued other than what was claimed in O.S.6/78.

5. It is in similar circumstances that a Coordinate Bench had concluded in Premier Tyres Limited vs. Kerala State Road Transport Corporation, 1993 (Suppl.) 2 SCC 146, that the effect of non-filing of an

appeal against a decree is that it attains finality and that this consequence would logically ensue when a decree in a connected suit is not appealed from. It permeates, as in the case in hand, into the sinews of all suits (O.S.5/78 and O.S.7/78) since common Issues had been framed, a common Trial had been conducted, common evidence was recorded, and a common Judgment had been rendered. It seems to us that the Division Bench had adopted the dialectic of the challenge to the title being irrelevant in O.S.5/78 in order to distinguish and then digress from the decision in Premier Tyres. Facially, all the factors are common to each suit, namely, the commonality of Issues, Trial and Verdict rendering any effort to differentiate them to be an exercise in futility. A reading of the plaint and of Issue No.2 in O.S.5/78 (supra) will make it impossible to harbour the view that the contours of controversy in that case concerned only the apprehension of forcible dispossession of the Tenants by the Trust as well as the Transferees. Otherwise, Issue No.2 was palpably irrelevant to the decision in O.S.5/78 and an ignorable surplusage. Furthermore, the dismissal of the suit, even though it was on the specious and untenable ground that no cause of action had arisen to justify the filing of O.S.5/78, would inexorably lead to the conclusion that the Tenants were, thereafter, bereft of any right in the suit property. The dismissal of O.S.5/78, arguably, would become fatal to the interest of the Tenant, if a pedantic perspective is pursued.

6. As outlined above, in the impugned Judgment the Division Bench of the High Court of Judicature at Madras had highlighted that the only question argued before it was that the principles of res judicata applied against the Tenant since it negligently if not concertedly did not appeal the verdict in O.S.5/78. At the threshold of its reasoning, it referred to the decision of this Court in Premier Tyres and pithily observed that the argument raised on behalf of the Trust would be “impeccable and would have to be accepted, only if the Appellant succeeds in establishing that Issue No. 2 in O.S. 5/78 was, in fact, an issue which directly and substantially arose for consideration in that suit and that the findings had been recorded thereon in favour of the Appellant”. It would have been expected of learned Counsel for the parties to have cited two decisions of different coordinate Benches of this Court, namely, Lonankutty vs. Thomman (1976) 3 SCC 528 and Narayana Prabhu Venkateswara Prabhu vs. Narayana Prabhu Krishna Prabhu (1977) 2 SCC 181, which throw considerable light on this subject. Regrettably, learned Senior Counsel for the parties have neglected to draw notice to these two precedents, even before us.

7. Lonankutty concerned a dispute between two owners of adjacent lands. The land of the Appellant was bounded on two sides by a river while the land of the respondents was landlocked, which prompted the respondents to construct a bund with sluice-gates on the border of their lands, so that they could draw water from the Appellant’s land for the purposes of fishing and agriculture and thereafter divert the water back through the same land to the river. The Appellant who was cultivating prawn-fishing on his land aggrieved by the construction of the bund believing it to have hampered his prawn fishing; therefore, he filed a suit for perpetual and mandatory injunction against the respondents. The respondents in turn filed a suit for injunction against the appellants and claimed rights of easement. The two suits were disposed of separately by the Court of Munsif and decrees were passed in both the suits to the effect that the respondents were to have rights of easement only with respect to agriculture but not for fishing. From the decrees, two set of appeals were preferred by both the parties, leading to four appeals altogether. The District Court dismissed all the appeals and thereby confirmed the decrees. The respondents then filed second appeals

against the decisions which arose from the appellant's suit but no second appeal was preferred from the appeals arising from their own suit. Before the High Court in Second Appeal, the Appellant promptly pressed the preliminary objection of res judicata contending that the decrees passed by the District Court in the appeals arising from the respondents' suit had become final. The High Court, however, was not impressed with that contention, primarily keeping the case of Narhari in perspective, and remanded the matter to the District Court after setting aside the judgment and decree of the District Court. The District Court in remand confirmed the previous view taken by it, against which the respondent again filed a Second Appeal in the High Court which was allowed, resulting in filing of a SLP by the Appellant. The sole and central issue canvassed before this Court was whether the Respondents' right to divert the flow of water through the Appellant's land for fishing purposes is barred by res judicata, and this Court answered in the affirmative. This Court concluded that the Respondents, by not filing further appeals against the decree passed by the District Court in the appeals arising out of their own suit allowed that decision to become final and conclusive. It observed further:

> "That decision, not having been appealed against, could not be reopened in the second appeal arising out of the appellant's suit. The issue whether respondents had the easementary right to the flow of water through the appellant's land for fishing purposes was directly and substantially in issue in the respondent's suit. That issue was heard and finally decided by the District Court in a proceeding between the same parties and the decision was rendered before the High Court decided the second appeal.....The circumstance that the District Court disposed of the 4 appeals by a common judgment cannot affect the application of Section 11... The failure of the respondents to challenge the decision of the District Court insofar as it pertained to their suits attracts the application of Section 11 because to the extent to which the District Court decided issues arising in the respondents' suit against them, that decision would operate as res judicata since it was not appealed against."

8. In Prabhu, the parties were descendants of one Narayan Prabhu. The respondent, third son among four sons of Narayan Prabhu, filed a suit for partition against all the sons claiming all the concerned items to be joint family property. The appellant, the eldest son, filed a money suit only against the respondent on the ground that trade of tobacco shops run by the parties in that suit was his self-acquired property; consequently, that he was entitled to money due on account of tobacco delivered to the respondent's shop. The Trial Court tried both the suits together and determined them by way of two decrees on the same date, holding that the shops in question belonged to the concerned individuals. The respondent appealed against both the decrees before the High Court, and the two appeals were decided in continuation under separate headings. The High Court while reversing the findings of the Trial Court held the shops to be part of joint family trade in tobacco and thus dismissed the money suit. The appellant thereafter approached this Court assailing the judgment and decree passed in the partition suit, whilst leaving the judgment and decree in the money suit unchallenged. Expectedly, the issue of res judicata was evoked by the respondent, which was sought to be doused by the appellant by contending, inter alia, that no certificate of fitness under the unamended Article 133(1)(c) of the Constitution of India was granted with respect to the money suit and also that parties were not common in both the suits. This Court while disagreeing

with the grounds taken by the appellant noted that there were two separate decrees and appellant could always have challenged the correctness or finality of the decision of the High Court in the money suit by means of an application for Special Leave to Appeal and approved the views taken by this Court in Lonankutty and reiterated:

> "The expression "former suit", according to Explanation I of Section 11 of the Civil Procedure Code, makes it clear that, if a decision is given before the institution of the proceeding which is sought to be barred by res judicata, and that decision is allowed to become final or becomes final by operation of law, a bar of res judicata would emerge."

9. O.S.6/78 was a suit filed by the Trust claiming an amount of Rs.11468/- as arrears of rent from the Tenants. Significantly, the three Transferees (who were Defendants 7 to 9 in O.S.5/78) had not been impleaded by the Trust palpably because no relief had been claimed against them and additionally because their presence was not relevant for the determination of the Issues that had arisen in O.S.6/78 and O.S.7/78. The claims pertained to a period prior to the assailed transfer of the demised land from the Trust to the Transferees. It is also noteworthy that even the Tenants did not seek their impleadments despite the fact that they had already laid siege to the title of the said Transferees in their plaint in O.S.5/78 and had specifically pleaded so in their Written Statements in O.S.6/78 and O.S.7/78. In this Suit, it was averred that the Trust had sold the suit land to the aforementioned Sarvshri P. Lakshamanan, P. Vadivelu and P. Saibabha (Transferees being Defendants 7 to 9 in O.S.5/78). It was, inter alia, pleaded that the advance rent of Rs.7000/- was repayable/adjustable only at the time of the handing over of the suit property by the Tenant to the Trust. Since relief claimed in O.S.6/78 or O.S.7/78 had no causality or connection with the Transferees their impleadment was not necessary, in our opinion. The defence of the Tenants was that the Trust was a public temple which could not have been sold/transferred by Shri Sethurama Chettiar and secondly that the amount claimed as arrears of rent was not due and payable. Various other pleas had been raised to which we need not advert as they are not germane for deciding the present Appeal. It will be relevant, however, to mention that the Tenants had also denied that any additional land had been taken on rent. Of the six Issues which came to be struck in O.S. 6/78 and O.S. 7/78, the following are relevant and, therefore, reproduced:-

> "(2) Whether the entire suit property ('A' and 'B' schedule) in possession of the defendants are covered by the lease deed dated 8-11-67 or whether there was any subsequent oral agreement in respect of 'B' schedule property alone and if so, what is its lease amount?
>
> (3) Whether the suit property belongs to a public temple governed by the Act. If so, whether the suit is maintainable for want of sanction under Section 26 of the Hindu Religious Institutions Act."

10. As already noted above, O.S.6/78 was decreed only for a sum of Rs.268/- holding, inter alia, that the Tenants cannot adjust the advance of Rs.7000/- as against the rent claim of Rs.11,468/- without the sanction of the landlord; that since the suit property was not owned by a public temple but by a

private trust, being the personal property of Shri Sethurama Chettiar, sanction under Section 26 of the Hindu Religious Institutions Act was not necessary; and that the Transferees had become the absolute owners of the suit property by transfer/sale. Most significantly, it was also held that the Tenants "are stopped from challenging the title of the present landlord and they are bound to attorn the tenancy. They have no right to question the title of the landlord or his successors-in-title." It is also palpably perceptible that the common Judgment entered into the arena of title and transferability of the suit property owing to the Tenants' stance in all three suits, thereby rendering imperative the filing of Appeals against the decrees in O.S.5/78 as well as O.S.7/78.

11. In O.S.7/78, as already outlined, the Trust sought recovery of Rs.2600/- as arrears of rent in respect of an alleged oral lease for the land mentioned in Schedule 'B' situated on the western side of the Schedule 'A' property. The defence of the Tenants was that the entire property comprising both Schedules 'A' and 'B' was a composite whole, and was let out for a period of 15 years by means of the Lease Deed dated 8.11.1967. It was also pleaded that the suit had been filed by a public trust and, thus, was not competent as framed. The Trial Court held that the entire demised property was one, covered by the aforementioned Registered Lease Deed, and, accordingly, O.S. 7/78 was dismissed with costs. It has been correctly observed in the common Judgment dated 6.11.1982 by which all three Suits have been decided, that the Issues framed in O.S.6/78 and O.S.7/78 were 'one and the same'. In a nut-shell, the Trial Court returned the finding that the Trust was not a Public Trust governed by the Hindu Religious Institutions Act, 1972 and that the sale of the demised suit land by the Private Trust through Shri Sethurama Chettiar to Sarvashri P. Lakshamanan, P. Vadivelu and P. Saibabha, was not contrary to law.

12. As has already been reflected and commented upon, the Tenants had filed an Appeal only in respect of O.S.6/78, although common conclusions had been arrived at in all three Suits, except for some inconsequential differences. It is trite that the obligation and duty to frame Issues is cast solely on the Court which may, nevertheless, elicit suggestions from the litigating adversaries before it. Issues settled by the Court under Order XIV CPC constitute the crystallization of the conflict or the distillation of the dispute between the parties to the lis, and are in the nature of disputed questions of fact and/or of law. While discharging this primary function, the Court is expected to peruse the pleadings of the parties in order to extract their essence, analyse the allegations of the parties and the contents of the documents produced by them, and, thereafter, proceed to frame the Issues. In our opinion, so far as O.S.5/78 is concerned, the question of the title of the property would ordinarily remain irrelevant to that litigation for two reasons. Firstly, Section 116 of the Evidence Act bars the Lessee/Licensee from constructing if not concocting a challenge vis-à-vis the title of the Lessor/Licensor, if it is the latter who has put the former in possession of the demised/licensed premises. In the case in hand, the first lease was executed by Shri Sethurama Chettiar and the renewal or the succeeding lease was between the Trust through its President, Shri Sethurama Chettiar, on the one hand, and the Tenants on the other. The Tenants, therefore, stood legally impeded and foreclosed from assailing the title of the Trust, as has been correctly concluded by the Trial Court, even though a specific Issue had not been struck in this context in O.S.5/78. There is no gainsaying that where parties are aware of the rival cases the failure to formally formulate an Issue fades into insignificance, especially when it is prominently present in connected matters and extensive evidence has been recorded on it without demur. Secondly, on a proper perusal of the

plaint, it ought to have been palpably evident that the Plaintiff/Tenant in O.S.5/78 feared dispossession from the demised premises because of what they considered to be an illegal transfer; but since all the Defendants had averred in their Written Statement that they had no intention of doing so, the suit ought not to have been dismissed but ought to have been decreed without more ado solely so far as the prayer of injunction was concerned. But, in the Trial Court the title to the leased land had become the fulcrum of the fight, owing to the pleadings of the Tenant in which it had repeatedly and steadfastly challenged the title of the Trust as well as the Transferees. The Tenant should not be permitted to approbate and reprobate, as per its whim or convenience, by disowning or abandoning a controversy it has sought to have adjudicated.

13. Chapter VIII of the Evidence Act under the heading 'Estoppel' is important for the present purposes. This fasciculus comprises only three provisions, being Sections 115 to 117. For ease of reference we shall reproduce Section 116:-

> "116. Estoppel of tenant; and of licensee of person in possession.- No tenant of immovable property, or person claiming through such tenant, shall, during the continuation of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property; and no person who came upon any immovable property by the license of the person in possession thereof, shall be permitted to deny that such person had a title to such possession at the time when such license was given." Plainly, this provision precludes the consideration of any challenge to the ownership of the Trust as the claim for arrears of rent was restricted to the period prior to the sale of the suit land by the Trust to the Transferees, namely Defendants 7 to 9 in O.S.5/78. The position would have been appreciably different, were the said Defendants 7 to 9 to lay any claim against the Tenants for arrears of rent or, for that matter, any other relief. This is for the reason that Section 116 of the Evidence Act would not come into play in any dispute between the Tenants on the one hand and the Transferees on the other.

14. We think it prudent to extract the conclusion from the Judgment dated 6.11.1982 common to O.S.5/78, O.S.6/78 and O.S.7/78, since it is the fountainhead, the fulcrum of the legal nodus which we have to unravel. The Trial Court has opined thus -

When no trustee member or the Government is claiming any right over the suit property, it is not known why the Tenant should entertain a doubt as to whether real title has passed on to the present purchasers of the suit property.

The suit property is therefore not a public temple governed by the Act and since the property is found to be the private property of Sethrama Chettiar, sanction O/S.26 of the Hindu Religious Institutions Act is therefore not necessary. The suit property being the personal property of Sethurama Chettiar and the same having been sold to defendants 7 to 9, the latter have become the absolute owners of the suit property and the plaintiffs in O.S.5/78 are stopped from challenging the title of the present landlord and they are bound to attorn the tenancy. They have no right to question the title of the landlord or his successors-in-life.

In the result, the ample evidence produced by the defendant would prove that the suit property is the private property of Sethurama Chettiar and sale deed dated 30.6.76 in Ex.A.19 is valid and the defendants 7 to 9 are now the real owners of the property who are entitled to take possession of the property after expiry of the lease. In the result, the issues are answered accordingly.

.....

In the result, O.S.5/78 is dismissed with cost. O.S.6/78 is decreed in part with cost as per the calculation above. Regarding O.S.7/78, since the court has held that the entire property is one, there cannot be any lease amount for the rear portion and it dismissed with cost.

15. The Tenants filed Appeal 581 of 1983 in the High Court of Judicature at Madras which came to be decided by the learned Single Judge on 25th April, 1997. It is indeed significant that the Transferees had not been impleaded by the Tenants in the First Appeal, although the former were parties before the Trial Court in the Tenants' own suit, viz. O.S. 5/78, and since any decision favourable to the Tenants as regards the legal propriety of the transfer of title would severely impact upon if not annihilate the Transferees' rights, and since O.S.5/78 had been 'dismissed', yet, regardless, no appeal thereagainst had been preferred. Shri Sethurama Chettiar was represented through his legal representatives in Appeal 581 of 1983 which had been preferred in respect of O.S.6/78 specifically. We have perused the contents of the Tenants Appeal, and as we expected, the gravamen of the assault was the public character and nature of the Trust and the legal imperfection of its transfer. This also fortifies the analysis that the dispute raised by the Tenants in their suit as well as their defence to the Trust's suits was that mentioned in the preceding sentence. This is indeed remarkable since the Tenant was fully alive to the detrimental nature of the decision in O.S. 5/78 and that it critically crippled its rights and interests, as is evident from the fact that the Tenant filed a Review bearing CRA No. 1/1993, which by a detailed Judgment dated 19.3.1999 was dismissed. So far as the contentions of the parties are concerned, the First Appellate Court had noted, inter alia, that the Tenants had denied any liability towards the arrears of rent; that the Tenant had argued that the Trust's Suits were not maintainable in law for want of necessary sanction under Section 25 of the Hindu Religious Institutions Act, 1972; that the Tenant did not admit the validity of the Sale Deed dated 1.7.1976 on the grounds that, having regard to Section 25 of the Hindu Religious Institutions Act, 1972, it was a nullity. The First Appellate Court conducted an elaborate and detailed discussions as to the nature of the Temple/Trust property in order to ascertain whether it partook of a private or a public trust. We have already highlighted that O.S.5/78 filed by the Tenants was "dismissed", nevertheless, this verdict has not been appealed against. After recording the detailed arguments on both sides, the First Appellate Court encapsulated the following points for consideration:-

> (i) Whether the present appeal by the plaintiff canvassing the findings of the trial court on issue numbers 2, 3 and 4 by the learned trial Judge is barred by the doctrine of res-judicata as contended by the respondents?

Whether findings given by the learned trial Judge on the above issues are correct, valid in law and as such it is sustainable?

Whether the plaintiff is entitled to question the validity of the sale-deed in favour of defendants 7 to 9 by the second defendant?

What relief, if any, the parties are entitled to?

Obviously, O.S. 5/78 was as focal as the other, otherwise (iii) above would not have arisen. It is evident that all concerned erroneously assumed that O.S.5/78 had also been carried in Appeal.

16. The First Appellate Court, in reversal, held that the Plaintiff in O.S.6/78 was a Public Trust and, accordingly, fell within the purview and sweep of the Hindu Religious Institutions Act, 1972. So far as the failure of the Tenants to appeal against the dismissal of O.S.5/78, the First Appellate Court held, in our opinion questionably, that that was not necessary since there was no adverse findings against the Tenants. While we can appreciate that owing to the stands of the defendants in their Written Statements filed in O.S.5/78 there was, in actuality, no challenge to the Plaint, but nevertheless, the suit of the Tenants had been 'dismissed' and therefore, at the very least, it would have been proper and prudent to file an appeal and at least in abundant caution obtain a clarification thereon. The 'dismissal' of suit O.S.5/78 cannot but be indicative of the opinion that all the assertions of fact and law were in the opinion of the Trial Court legally untenable, perforce including that the Trust could not have transferred the suit property in the manner it did. For this very reason the Tenant should also have appealed against the verdict in O.S.7/78 in respect of the findings of the Trial Court common to O.S.6/78; since the Trust had not assailed the rejection of its plea that a separate tenancy governed the claim in O.S.7/78 that part of the verdict had attained finality. The First Appellate Court has opined, in the event erroneously, that the doctrine of res judicata was not attracted to the facts of the instant case. It appears to us that the First Appellate Court lost perspective of the position that Section 116 of the Evidence Act rendered impermissible and incompetent any challenge to the title of the Trust/Landlord which had put the Appellant in possession of the demised property. It is also noteworthy that the Tenant had contested the legal capacity of the Trust/Landlord to convey the property to the Transferees. Ergo, it was nobody's case that although the Trust had title to the suit property at the inception it had lost it subsequently. There is in fact a stark omission to discuss this aspect in the Judgment of the First Appellate Court, which therefore erred in concluding that the Trust/Landlord was a public trust and was, accordingly, incompetent to sell the Trust property. This is all the more significant since it reversed the opinion of the Trial Court without affording any opportunity of hearing to the Transferees who had not been impleaded by the Tenants in its Appeal although they were defendants in the Tenants suit; they were not before the High Court because the Tenant decided to not to appeal against the dismissal of O.S.5/78 in which it had also raised these very questions. If it is contended that all the three suits were covered by a common judgment, the Tenant ought to have impleaded the Transferees in its Appeal.

17. The Trust filed the Second Appeal before the Division Bench of the High Court of Judicature at Madras, but inexplicably and conspicuously restricted its challenge only to the opinion of the First Appellate Court vis-à-vis the impact and effect of the principle of res judicata on that lis. The Trust had by that time already sold the property and remarkably their only subsisting interest was for the recovery of the paltry decretal sum of Rs.268/. We would have expected the Trust to vehemently

assert that a decision adverse to its Transferees could legally not have been delivered in their absence; and that Section 116 of the Evidence Act disabled the Tenants from challenging the Trust's title or legal character, since it is the Trust which had put the Tenant in possession. However, as it has transpired, the Second Appellate Court agreed with the interpretation given by the First Appellate Court that res judicata did not apply against the Tenants.

18. For facility of reference Section 11 of the CPC is extracted below:

> Res Judicata- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.
>
> Explanation I.- The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.
>
> Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.
>
> Explanation III.- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.
>
> Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. Explanation V.- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.
>
> Explanation VI.- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating. Explanation VII.- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree; question arising in such proceeding and a former proceeding for the execution of that decree.
>
> Explanation VIII.- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not

competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

The decision rendered by three Co-ordinate Benches of this Court, namely firstly Lonankutty, secondly Prabhu and thirdly Premier Tyres have already been discussed above.

19. We must additionally advert to a Four-Judge Bench decision in Sheodan Singh vs. Daryao Kunwar (1966) 3 SCR 300, in which this Court has lucidly enumerated five constituent elements of Section 11, 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.

The conundrum in Sheodan Singh was only marginally different to what has arisen before us. The Appellate Court was confronted with five Appeals from five different Suits between the same parties in which the Issues were common. Two of the Appeals were dismissed, albeit, not on merits. It was in those premises argued and accepted by this Court that the principles of res judicata became operational with regard to the decrees passed in the two suits in respect of which the Appeals filed thereagainst had been dismissed. It was pithily observed that otherwise “all that the losing party has to do to destroy the effect of a decision given by the trial court on the merits is to file an appeal and let that appeal be dismissed on some preliminary ground, with the result that the decision given on the merits also becomes useless as between the parties.” Sheodan Singh took note of several judgments of the High Courts, which preferred to overlook procedural technicalities ostensibly in the interests of the merits of the matter, but did not state its final opinion, which has propelled us to do so in order so that the divergent opinions be interred and dissonance be removed.

20. On the issue of applicability of res judicata in cases where two or more suits have been disposed of by one common judgment but separate decrees, and where the decree in one suit has been

appealed against but not against the others, various High Courts have given divergent and conflicting opinions and decisions. The High Court of Madras and erstwhile High Courts of Lahore, Nagpur and Oudh have held that there could be no res judicata in such cases whereas the High Courts of Allahabad, Calcutta, Patna, Orissa and erstwhile High Court of Rangoon have taken contrary views. It should also be noted that there are instances of conflicting judgments within the same High Court as well. The decision of Tek Chand, J. in Full Bench Judgment of the Lahore High Court in Lachhmi vs. Bhulli [AIR (1927) Lah 289] and Full Bench Judgment of the Madras High Court in Panchanda Velan vs. Vaithinatha Sastrial [ILR (1906) 29 Mad 333] and of the Oudh High Court in B. Shanker Sahai v. B. Bhagwat Sahai [AIR 1946 Oudh 33 (FB)] appear to be the leading decisions against the applicability of res judicata. Without adverting to the details of those cases, it is sufficient to note that the hesitancy or reluctance to the applicability of the rigorous of res judicata flowed from the notion that Section 11 of the Code refers only to "suits" and as such does not include "appeals" within its ambit; that since the decisions arrived in the connected suits were articulated simultaneously, there could be no "former suit" as stipulated by the said section; that substance, issues and finding being common or substantially similar in the connected suits tried together, non-filing of an appeal against one or more of those suits ought not to preclude the consideration of other appeals on merits; and that the principle of res judicata would be applicable to the judgment, which is common, and not to the decrees drawn on the basis of that common judgment.

21. On the other hand, the verdict of Full Bench of the Allahabad High Court in Zaharia vs. Debia ILR (1911) 33 All 51 and decisions of the Calcutta High Court in Isup Ali vs. Gour Chandra Deb 37 Cal LJ 184: AIR 1923 Cal 496 and of the Patna High Court in Mrs. Getrude Oastes vs. Mrs Millicent D'Silva ILR 12 Pat 139 : AIR 1933 Pat 78 are of the contrary persuasion. These decisions largely proceeded on the predication that the phraseology "suit" is not limited to the Court of First Instance or Trial Court but encompasses within its domain proceedings before the Appellate Courts; that non-applicability of res judicata may lead to inconsistent decrees and conflicting decrees, not only due to multiplicity of decrees but also due to multiplicity of the parties, and thereby creating confusion as to which decree has to be given effect to in execution; that a decree is valid unless it is a nullity and the same cannot be overruled or interfered with in appellate proceedings initiated against another decree; that the issue of res judicata has to be decided with reference to the decrees, which are appealable under Section 96 of the CPC and not with reference to the judgment (which has been defined differently), but with respect to decrees in the CPC; that non-confirmation of a decree in appellate proceedings has no consequence as far as it reaching finality upon elapsing of the limitation period is concerned in view of the Explanation II of Section 11, that provides that the competence of a Court shall be determined irrespective of any provisions as to right of appeal from the decision of such Court; and that Section 11 of the CPC is not exhaustive of the doctrine of res judicata, which springs up from the general principles of law and public policy.

22. Procedural norms, technicalities and processal law evolve after years of empirical experience, and to ignore them or give them short shrift inevitably defeats justice. Where a common judgment has been delivered in cases in which consolidation orders have specifically been passed, we think it irresistible that the filing of a single appeal leads to the entire dispute becoming sub judice once again. Consolidation orders are passed by virtue of the bestowal of inherent powers on the Courts by Section 151 of the CPC, as clarified by this Court in Chitivalasa Jute Mills vs. Jaypee Rewa Cement

(2004) 3 SCC 85. In the instance of suits in which common Issues have been framed and a common Trial has been conducted, the losing party must file appeals in respect of all adverse decrees founded even on partially adverse or contrary speaking judgments. While so opining we do not intend to whittle down the principle that appeals are not expected to be filed against every inconvenient or disagreeable or unpropitious or unfavourable finding or observation contained in a judgment, but that this can be done by way of cross-objections if the occasion arises. The decree not assailed thereupon metamorphoses into the character of a "former suit". If this is not to be so viewed, it would be possible to set at naught a decree passed in Suit A by only challenging the decree in Suit B. Law considers it an anathema to allow a party to achieve a result indirectly when it has deliberately or negligently failed to directly initiate proceedings towards this purpose. Laws of procedure have picturesquely been referred to as handmaidens to justice, but this does not mean that they can be wantonly ignored because, if so done, a miscarriage of justice inevitably and inexorably ensues. Statutory law and processal law are two sides of the judicial drachma, each being the obverse of the other. In the case in hand, had the Tenant diligently filed an appeal against the decree at least in respect of O.S. 5/78, the legal conundrum that has manifested itself and exhausted so much judicial time, would not have arisen at all.

23. Adverting in the impugned Judgment to the decision of this Court in Sajjadanashin Sayed vs. Musa Dadabhai Ummer AIR 2000 SC 1238, the Division Bench delineated the distinction between an aspect of the litigation that is collaterally and incidentally, as against one that is directly and substantially focal to the question the determination of which is the immediate foundation of the decision. Reference was also drawn to enunciation of what constitutes res judicata in Hoag vs. New Jersey (1958) 356 U.S. 464, namely that this important legal principle is attracted "if the records of the formal trial show that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties". The Division Bench also garnered guidance from the observations of this Court in Isher Singh vs. Sarwan Singh, AIR 1965 SC 948 requiring the examination of the Pleadings and the Issues in order to ascertain whether the question was directly and substantially litigated upon. The Division Bench also considered Asrar Ahmed vs. Durgah Committee, Ajmer, AIR 1947 PC 1 and Pragdasji Guru Bhagwandasji vs. Patel Ishwarlalbhai Narsibhai, AIR 1952 SC 143, before concluding that Issue No.2 framed in O.S. 5/78 was wholly unnecessary and faulty. The Division Bench held that the findings on that Issue were unnecessary, did not constitute the minimum foundation for the ultimate decision and, therefore, would not constitute res judicata. We have already indicated above that, in our opinion, if O.S.5/78 was merely a suit for injunction simpliciter, since the Defendants therein (both the Trustees as well as the Transferees) had posited in their respective Written Statements that they had no intention to dispossess the Plaintiff/Tenant, that suit ought not to have been dismissed but should have been decreed. We have also laid emphasis on the fact that the Tenant had made a specific and pointed assertion in the plaint that the transfer of the demised land by the Trust to the Transferees was not in consonance with Section 26 of the Puducherry Hindu Religious Institutions Act, 1972. We have also noticed the fact that this was an important objection raised by the Tenant in their Written Statement in O.S.6/78 and O.S.7/78. It seems to be incongruous to us to consider ownership of the demised premises to be irrelevant in O.S.5/78 but nevertheless constitute the kernel or essence or fulcrum of the disputes in O.S.6/78 and O.S.7/78. The dialectic adopted by the Court must remain steadfastly constant – if title was irrelevant so far as

a claim for injunction simpliciter, it was similarly so in relation to the party having the advantage of Section 116 of the Evidence Act in respect of its claim for arrears of rent from its tenant. It would not be logical to overlook that the pleadings on behalf of the Tenant were common in all three suits, and that Issues on this aspect of the dispute had been claimed by the Tenants in all the three suits. On a holistic and comprehensive reading of the pleadings of the Tenant in all the three suits, it is inescapable that the Tenant had intendedly, directly and unequivocally raised in its pleadings the question of the title to the demised premises and the legal capacity of the Trustees to convey the lands to the Transferees. This is the common thread that runs through the pleadings of Tenant in all three suits. It is true that if O.S.5/78 was a suit for injunction simpliciter, and in the wake of the stance of the Trustees and Transferees that no threat had been extended to the Tenants regarding their ouster, any reference or challenge to the ownership was wholly irrelevant. But the ownership issue had been specifically raised by the Tenant, who had thus caused it to be directly and substantially in issue in all three suits. So far as the Suit Nos.6/78 and 7/78 are concerned, they were also suits simpliciter for the recovery of rents in which the defence pertaining to ownership was also not relevant; no substantial reason for the Tenant to file an appeal in O.S. 6/78 had arisen because the monetary part of the decree was relatively insignificant. Obviously, the Tenant's resolve was to make the ownership the central dispute in the litigation and in these circumstances cannot be allowed to equivocate on the aspect of ownership. Logically, if the question of ownership was relevant and worthy of consideration in O.S. 6/78, it was also relevant in O.S. 5/78. Viewed in this manner, we think it is an inescapable conclusion that an appeal ought to have been filed by the Tenant even in respect of O.S. 5/78, for fear of inviting the rigours of res judicata as also for correcting the "dismissal" order. In our opinion, the Tenant had been completely non-suited once it was held that no cause of action had arisen in its favour and the suit was 'dismissed'. Ignoring that finding and allowing it to become final makes that conclusion impervious to change. In Sheoparsen Singh vs. Ramnandan Prasad Singh, (1915-16) 43 I.A.91, the Privy Council opined - "Res judicata is an ancient doctrine of universal application and permeates every civilized system of jurisprudence. This doctrine encapsulates the basic principle in all judicial systems which provide that an earlier adjudication is conclusive on the same subject matter between the same parties." The raison d'etre and public policy on which Res judicata is predicated is that the party who has raised any aspect in a litigation and has had an Issue cast thereon, has lead evidence in that regard, and has argued on the point, remains bound by the curial conclusions once they attain finality. No party must be vexed twice for the same cause; it is in the interest of the State that there should be an end to litigation; a judicial decision must be accepted as correct in the absence of a challenge. The aspect of law which now remains to be considered is whether filing of an Appeal against a common Judgment in one case, tantamounts to filing an appeal in all the matters.

The application of res judicata, so very often, conjures up controversies, as is evident from the fact that even in this Court divergent opinions were expressed by the two Judge Bench, leading to the necessity of referring the appeal to a Larger Bench. It was for this reason that we thought it appropriate to deal with the dispute in detail. It seems to us that had the decisions of the three Judge Bench in Lonankutty and Prabhu been brought to the attention of our Learned and Esteemed Brothers on the earlier occasion when this appeal was heard by two Judge Bench, the dichotomy in opinion would not have arisen. The outcome of the appeal before the High Court would have also shared a similar fate. On the foregoing analysis, especially the previous enunciation of law by three

Co- ordinate Benches, we are in agreement with the opinion of our Learned Brother Asok Kumar Ganguly that the appeal calls to be allowed. We are of the opinion that having failed or neglected or concertedly avoided filing appeals against the decrees in O.S.5/78 and O.S.7/78 the cause of the Respondents/Tenants was permanently sealed and foreclosed since res judicata applied against them. We accordingly allow this Appeal but keeping the varying verdicts in view decline from making any order as to costs.

……J. (ANIL R. DAVE) ……J. (VIKRAMAJIT SEN) .....J (PINAKI CHANDRA GHOSE) New Delhi, October 09, 2014.

ITEM NO COURT NO.14 SECTION XII
(1A For judgment)
S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

GANGAI VINAYAGAR TEMPLE & ANR. Appellant(s)

VERSUS

MEENAKSHI AMMAL & ORS. Respondent(s)
(with office report)

Date : 09/10/2014 This appeal was called on for pronouncement of judgment today.

For Appellant(s) Mr. Sanjay R. Hegde,Adv.

For Respondent(s) Mr. K. Ramamoorthy, Sr.Adv.
Mr. Senthil Jagadeesan, Adv.
Mr. V. Ramasubramanian,Adv.

Hon'ble Mr. Justice Vikramajit Sen pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Anil R. Dave, His Lordship and Hon'ble Mr. Justice Pinaki Chandra Ghose.

The appeal is allowed with no order as to costs in terms of the signed judgment.

(USHA BHARDWAJ) (SAROJ SAINI)
AR-CUM-PS (COURT MASTER)

Signed reportable judgment is placed on the file.
