Gangai Vinayagar Temple Vs Meenakshi Ammal

Court: Supreme Court of India

Date of Decision: Oct. 9, 2014

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 14 Rule 1, Order 2 Rule 2, 11, 151, 96
Constitution of India, 1950 â€" Article 133(1)
Evidence Act, 1872 â€" Section 115, 116, 117
Pondicherry Hindu Religious Institutions Act, 1972 â€" Section 25, 26

Citation: (2014) 6 AWC 6082 : (2014) 4 CALLT 48 : (2015) 1 CHN 163 : (2015) 1 LW 1 : (2014) 4 RCR(Civil) 920 : (2014) 11 SCALE 654 : (2015) 3 SCC 624 : (2015) 5 SCJ 558 : (2015) 2 WLN 124

Hon'ble Judges: Vikramajit Sen, J; Pinaki Chandra Ghose, J; Anil R. Dave, J

Bench: Full Bench

Advocate: Jaideep Gupta, Sr. Advocate, Sanjay R. Hedge, S. Nithin and Kunal Chatterji, Advocates for the Appellant; K. Rama Moorthy, Sr. Adv., Surendra Nath, Govind Manoharan, Senthil Jagadeesan, Shruti Iyer and V. Ramasubramanian, Advocates for the Respondent

Final Decision: Disposed Of

Judgement

Vikramajit Sen, J.
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 (""Code of Civil Procedure"" 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

(ii) For permanent injunction restraining the Defendants, their agents, servants and other representatives from interfering with the Plaintiffs peaceful

possession and enjoyment of the suit property till 1-1-1983.

(iii) Directing the Defendants to pay to the Plaintiff the costs of the suit; and

(iv) 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 Code of Civil Procedure 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, ,

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 and Another, and Narayana Prabhu Venkateswara Prabhu Vs.

Narayana Prabhu Krishna Prabhu (Dead) by L. Rs., , 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 Code of Civil Procedure, 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 Sarvashri 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 Code of Civil Procedure 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-Ã¯Â¿Â½-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 Sethurama

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 25

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 there against 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?

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

(iii) Whether the Plaintiff is entitled to question the validity of the sale-deed in favour of Defendants 7 to 9 by the second Defendant?

(iv) 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-Ã¯Â¿Â½-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 Code of Civil Procedure 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. Smt. Daryao Kunwar, , 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 there against 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 Sheodan Singh Vs. Smt. Daryao Kunwar, and Full Bench judgment of the Madras

High Court in Panchanada Velan Vs. Vaithinatha Sastrial and Others, 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. Debi and Others, and decisions of the Calcutta High

Court in Isup Ali and Others Vs. Gour Chandra Deb, and of the Patna High Court in Mrs. Gertrude Oates Vs. Mrs. Millicent D"Silva, 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 Code of Civil Procedure and not with reference to the judgment (which has been defined

differently), but with respect to decrees in the Code of Civil Procedure; 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 Code of Civil Procedure 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 Code of Civil Procedure, as clarified by this Court in Chitivalasa

Jute Mills Vs. Jaypee Rewa Cement, . 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 Md. B.E.Edr. (D) By Lrs. Vs. Musa Dadabhai

Ummer and Others, , 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 v. 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 and Others, 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 Isher Singh Vs. Sarwan Singh and

Others, and Mahant Pragdasji Guru Bhagwandasji Vs. Patel Ishwarlalbhai Narsibhai and Others, 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 Mahant Pragdasji Guru Bhagwandasji Vs. Patel Ishwarlalbhai Narsibhai

and Others, , 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.

24. 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 conceitedly 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.