Sheodan Singh

Vs

Smt. Daryao Kunwar

Civil Appeal Nos. 802 and 803 of 1963

(Bachawat –I, K. N. Wanchoo, R. Satyanaryan Raju JJ)

14. 01.1966

JUDGMENT

WANCHOO. J.

These are connected appeals by special leave against the Judgment of the High Court of Allahabad, and the only question raised herein is one of res judicata. They will be dealt with together. The appellant's father brought suit No. 37 of 1950 against the respondent, Smt. Daryao Kunwar, for a declaration that he was the owner of the properties in suit and for possession in the alternative. The appellant was also a party to the suit as a proforma defendant. Since his father is dead, he has been substituted in his place. The case out forward in the plaint was that Harnam Singh was the uncle of the appellant's father. Ram Kishan was the adopted son of Harnam Singh, and the respondent is his widow. The appellant and his father were living jointly with Harnam Singh and his adopted son Ram Kishan and on the death of Harnam Singh and his adopted son, the appellant and his father became owner of the joint properties by survivorship; but the names of the widows of Harnam Singh and Ram Kishan were entered in revenue papers for their consolation, though they had no right or title to any part of the property in dispute. There were other allegations in the plaint with which we are however not concerned in the present appeals.

Shortly afterwards the appellant's father filed another suit No. 42 of 1950 against the respondent and one other person claiming the price of the crops which stood on certain sir and khudkashat plots in two villages on the allegation that the respondent had cut and misappropriated the crops standing on these plots without having any right, title or interest therein. The respondent Smt. Daryao Kunwar contested both the suits. Her main defence was that there had been complete partition in the family as a result of which Harnam Singh and after him his adopted son Ram Kishan were the sole owners of their separated shares. After the death of Ram Kishan, the respondent inherited his entire property as his widow. Both these suits had been filed in the court of the Civil Judge.

While these suits were pending, the respondent instituted two suits of her own, Nos. 77 and 91 of 1950, against the appellant and father, Suit No. 77 was for recovery of the price of her share of the crop grown on certain sir and khudkashat plots which had been cut and misappropriated by the appellant and his father. Suit No. 91 was also for a similar relief in respect of the respondent's share of crops grown on certain sir and khudkashat plots in another village which had also been cut and misappropriated by the appellant and his father. Her case was that the plots in question in both the villages belonged to the parties jointly and crop was jointly sown by them and she was entitled to half of the said crops. Further in suit No. 77 of 1950 she also claimed the relief of permanent injunction restraining the appellant and his father from letting out the said plots without her consent. These two suits were filed in the court of the Munsif while suits filed by the appellant's father had

been instituted in the court of the Civil Judge. Subsequently by an order of the District Judge, the two suits filed by the respondent were transferred to the court of the Civil Judge. Thereafter all the four suits were consolidated and tried together by the Civil Judge with the consent of the parties. All these suits were disposed of by a common judgment but separated decrees were prepared in each suit. In all these suits five issues were common. In addition there were other issues in each case respecting the particular merits thereof. One of the common issues related to respective rights of the parties to the suit property. The finding of the Civil Judge on this issue was that Smt. Daryao Kunwar was entitled to the properties claimed by the appellant's father in his suit No. 37 of 1950. The Civil Judge therefore dismissed that suit. Further in view of the finding on the question of title in suit No. 37 of 1950, suit No. 91 of 1950 was decreed in favour of the respondent. Further suit No. 42 by the appellant's father was on the same finding decreed to the extent of half only; suit No. 77 of 1950 was decreed also to extent of half and a permanent injunction was granted in favour of the respondent Smt. Daryao Kunwar as prayed by her in that suit.

The appellant's father was aggrieved by these decrees. Consequently the filed two first appeals in the High Court. Appeal No. 365 of 1951 was against the dismissal of suit No. 37 while appeal No. 366 of 1951 was against the dismissal suit No. 42. The appellant's father also filed two appeals in the court of the District Judge against the judgments and decrees in the suit filed by the respondent, Smt. Daryao Kunwar. Appeal No. 452 of 1951 was against the decree in suit No. 77 while appeal No. 453 of 1951 was against the decree in suit No. 91. By an order of the High Court, the two appeals pending in the court of the District Judge were transferred to the High Court. Thereafter appeal No. 453 of 1951 arising out of suit No. 91 was dismissed by High Court on October 9, 1953 as being time-barred while appeal No. 452 of 1951 arising out of suit No. 77 was dismissed by the High Court on October 7, 1955 on the ground of failure of the appellant's father to apply for translation and printing of the record as required by the rules of the High Court. It may be mentioned that appeals Nos. 452 and 453 were given different numbers on transfer to the High Court; but it is unnecessary to refer those number for present purposes.

After appeals Nos. 452 and 453 had been dismissed, an application was made on behalf of the respondent, Smt. Daryao Kunwar, praying that first appeals Nos. 365 and 366 of 1951 be dismissed, as the main question involved therein, namely, title of Smt. Daryao Kunwar to the suit property, had become final and account of the dismissal of the appeals arising out of suit Nos. 77 and 91 of 1950. When this question came up for hearing before a learned single Judge, the following question, namely - "whether the appeal is barred by section 11 of the Code of Civil Procedure or by the general principles of res judicata as the appeals against the decisions in suits Nos. 77 and 91 of 1951 were rejected and dismissed by this Court and those decisions have become final and binding between parties" was referred to a Full Bench for decision in view of some conflict between two Division Benches of that court.

The Full Bench came to the conclusion that two matters were directly and substantially in issue in all the four suits, namely - (i) whether Harnam Singh and his adopted son Ram Kishan died in a state of jointness with the appellant and his father, and (ii) whether the property in suit was joint family property of Ram Kishan and appellant's father. The decision of the Civil Judge on both these issues was against the appellant and his father and in favour of Smt. Daryao Kunwar. The Full Bench held that though there were four appeals originally before the High Court, two of them had been dismissed and the vary same issues which arose in first appeals Nos. 365 and 366 had also arisen in those two appeals which had been dismissed. The Full Bench found further that the terms of s. 11 of the Code of Civil Procedure were fully applicable and therefore the two first appeals Nos. 365 and 366 were barred by res judicata to the extent of the decision of the five issues which were

common in four connected appeals. In the result Full Bench returned that answer to the question referred to it.

After this decision of the Full Bench, the matter went back to the learned Single Judge for decision, who thereupon dismissed the appeals as barred by s. 11 of the Code of Civil Procedure. The appellant then obtained special leave from this court; and that is how the matter has come up before us.

We may at the out set refer to the relevant provisions s. 11 of the Code of Civil Procedure insofar as they are material for present purposes. They read thus :

> "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.
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> "Explanation 1 - 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.
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It is not necessary to refer to the other Explanations.

A plain reading of s. 11 shows that to constitute a matter res judicata, the following conditions must be satisfied, namely -

> (i) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit;
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> (ii) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim;
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> (iii) The parties must have litigated under the same title in the former suit;
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> (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
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> (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 I shows that it is not the date on which the suit is filed that matters but the date on which the suit is decided, so that even if a suit was filed later, it will be a former suit if it has been decided earlier. In order therefore that the decision in the earlier two appeals dismissed by the High Court operates as res judicata it will have to be seen whether all the five conditions mentioned above have been satisfied.
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> Four contentions have been urged on behalf of the appellant in this connection. They are -

(i) that title to property was not directly and substantially in issue in suits Nos. 77 and 91;

(ii) that the court of the Munsif could not try the title suit No. 37 of 1950;

(iii) that it cannot be said that appeals arising out of suits Nos. 77 and 91 were former suits and as such the decision therein would be res judicata;

(iv) that it cannot be said that the two appeals from suits Nos. 77 and 91 which were dismissed by the High Court, one on the ground of limitation and the other on the ground of not printing the records, were heard and finally decided.

So it is contended that the conditions necessary for res judicata to arise under s. 11 have not been satisfied and the High Court was in error in holding that its dismissal of the two appeals arising from suits Nos. 77 and 91 amounted to res judicata so far as appeals Nos. 365 and 366 were concerned.

Re. (i).

The judgment of the Additional Civil Judge shows that there were five issues common to all the four suits, and the main point raised in these common issues was whether Harnam Singh and his adopted son Ram Kishan were joint with the appellant and his father and whether Ram Kishan died in a state of jointness with them. This main question was decided against the appellant and his father and it was held by the Additional Civil Judge that Harnam Singh and Ram Kishan were separate from the appellant and his father and that Ram Kishan did not die not in a state of jointness with them. On this view of the matter, the Additional Civil Judge held that the respondent, Smt. Daryao Kunwar, succeeded to Ram Kishan on his death and was entitled to the separated share of Ram Kishan and the appellant and his father had no right to the property by survivorship. In the face of the judgment of the Additional Civil Judge which shows that there were five common issues in all the four suits, the appellant cannot be heard to say that these issues were not directly and substantially in issue in suits Nos. 77 and 91 also. Further this contention was not raised in the High Court and the appellant cannot be permitted to raise it for the first time in this Court. Besides the question whether these common issues were directly and substantially in issue in suits Nos. 77 and 91 can only be decided after a perusal of the pleadings of the parties. In the paper book as originally printed, the appellant did not include the pleadings at all. Later he filed copies of the plaints only with an application. Even now we have not got copies of written-statement and replications, if any, of suits Nos. 77 and 91. In the circumstances we must accept from the fact that the judgment of the Additional Civil Judge shows that these five issues were raised in suits Nos. 77 and 91, that they were directly and substantially in issue in those suits also and did arise out of the pleadings of the parties. We therefore reject the contention that issues as to title were not directly and substantially in issue in suits Nos. 77 and 91.

Re. (ii).

There is no substance in the contention that the Munsif before whom suits Nos. 77 and 91 were filed could not try the title suit No. 37 and therefore, there can be no question of res judicata, as the title suit No. 37, assuming it to be a subsequent suit, could not be tried by the Munsif's court which tried by former suit. It is true that suit Nos. 77 and 91 were filed in the Munsif's Court; but they were transferred to court of the Additional Civil Judge and in actual fact were tried by the Additional

Civil Judge. It is the court which decided the former suit whose jurisdiction to try the subsequent suit has to be considered and not the court in which the former suit may have been filed. Therefore, though suit Nos. 77 and 91 may have been filed in the Munsif's court, they were transferred to the court of the Additional Civil Judge and were decided by him. There is no dispute that the court which decided the former suits, namely suits Nos. 77 and 91 (assuming them to be former suits) had jurisdiction to try the title suit No. 37. The contention that the Munsif before whom suits Nos. 77 and 91 were filed, could not try the subsequent suit No. 37 has therefore no force in the circumstances of the present litigation.

Re. (iii).

Then it is urged that all the four suits were consolidated and decided on the same day by the same judgment and there can therefore be no question that suits Nos. 77 and 91 were former suits and thus the decision as to title in those suits became res judicata. It is not in dispute that the High Court's decision in the appeals arising from suits Nos. 77 and 91 was earlier. Reliance in this connection is placed on the decision of this Court in Nahari v. Shankar ((1950) S.C.R. 754.). That case however has no application to the fact of the present case, because there the suit was only one which was followed by two appeals. The appeals were heard together and disposed of by the same judgment though separate decrees were prepared. An appeal was taken against one of the decrees. In those circumstances this Court held that as there was only one suit, it was not necessary to file two separate appeals and the fact that one of the appeals was time-barred did not affect the maintainability of the other appeal and the question of res judicata did not at all arise. In the present case there were different suits from which different appeals had to be filed. The High Court's decision in the two appeals arising from suits Nos. 77 and 91 was undoubtedly earlier and therefore the condition that there should have been a decision in the former suit to give rise to res judicata in a subsequent suit was satisfied in the present case. The contention that there was no former suit in the present case must therefore fail.

Re. (iv).

This brings us to the main point that has been urged in these appeals, namely, that the High Court had not heard and finally decided the appeals arising out suits Nos. 77 and 91. One of the appeals was dismissed on the ground that it was filed beyond the period of limitation while the other appeal was dismissed on the ground that the appellant therein had not taken steps to print the records. It therefore urged that the two appeals arising out of suits Nos. 77 and 91 had not been heard and finally decided by the High Court, and so the condition that the former suit must have been heard and finally decided was not satisfied in the present case. Reliance in the connection is placed on the well-settled principle that in order that a matter may be said to have been heard and finally decided, the decision in the former suit must have been on the merits. Where, for example, the former suit was dismissed by the trial court for want of jurisdiction, or for default of plaintiff's appearance, or on the ground of non-joinder of parties or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letters of administration or succession certificate when the same is "required by low to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation or for failure to pay additional court fee on a plaint which was undervalued or for want of cause of action or on the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision not being on the merits would not be res judicata in a subsequent suit. But none of these considerations apply in the present case, for the Additional Civil Judge decided all the four suits on the merits and decided the issue as to title on

merits against the appellant and his father. It is true that the High Court dismissed the appeals arising out of suits Nos. 77 and 91 either on the ground that it was barred by limitation or on the ground that steps had not been taken for printing the records. Even so the fact remains that the result of the dismissal of the two appeals arising from suits Nos. 77 and 91 by the High Court on these grounds was that the decrees of the Additional Civil Judge who decided the issue as to title on merits stood confirmed by the order of the High Court. In such a case, even though the order of the High Court may itself not be on the merit the result of High Court's decision is to confirm the decision on the issue of title which had been given on the merits by the Additional Civil Judge and thus it effect the High Court confirmed the decree of the trial court on the merits, whatever may be the reason for the dismissal of the appeals arising from suits Nos. 77 and 91. In these circumstances though the order of the High Court itself may not be on the merits, the decision of the High Court dismissing the appeals arising out of suits Nos. 77 and 91 was to uphold the decision on the merits as to issue of title and therefore it must be held that by dismissing the appeals arising out of suits Nos. 77 and 91 the High Court heard and finally decided the matter of it confirmed the judgment of the trial court on the issue of title arising between the parties and decision of the trial court being on the merits the High Court's decision confirming that decision must also be deemed to be on the merits. To hold otherwise would make res judicata impossible in cases where the trial court decides the matter on merits but the appeal court dismisses the appeal on some preliminary ground thus confirming the decision of the trial court on the merits. It is well-settled that where a decree on the merits is appealed from, the decision of the trial court loses its character of finality and what was once res judicata again becomes res sub judice and it is the decree of appeal court which will then be res judicata. But if the contention of the appellant were to be accepted and it is held that if the appeal court dismisses the appeal on any preliminary ground, like limitation or default in printing, thus confirming in toto the trial court's decision on merits, the appeal court's decree cannot be res judicata, the result would be that even though the decision of the trial court given on the merits is confirmed by the dismissal of the appeal on a preliminary ground there can never be res judicata. We cannot therefore accept the contention that even though the trial court may have decided the matter on the merits there can be no res judicata if the appeal court dismisses the appeal on the preliminary ground without going into the merits, even though the result of the dismissal of the appeal by the appeal court is confirmation of the decision of the trial court given on the merits. Acceptance of such a proposition will mean that 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. We are therefore of opinion that where a decision is given on the merits by the trial court and the matter is taken in appeal and the appeal is dismissed on some preliminary ground, like limitation or default in printing, it must be held that such dismissal when it confirms the decision to the trial court on the merits itself amounts to the appeal being heard and finally decided on the merits whatever may be the ground for dismissal of the appeal.

It now remains to refer to certain decisions which cited at the bar in this connection. The first decision on which reliance is placed on behalf of the appellant is Sheosagar Singh v. Sitaram. (L.R. (1896) 24 I.A. 50) In that case there was a suit for a declaration that the defendant was not the son of a particular person. It appeared that in a former suit between the same parties, the issue so raised had been decided against the plaintiffs by the trial court. In appeal the only thing finally decided was that in suit constituted as the former suit was, no decision ought to have been pronounced on the merits. In those circumstances the Privy Council held that the issue had not been heard and finally decided in the former suit. These facts would show that case has no application to the present case. In that case the finality of the judgment of the trial court in the former suit had been destroyed

by the appeal taken therefrom and the appeal court decided that no decision ought to have been pronounced on the merits in the former suit constituted as it was. It was in those circumstances that the Privy Council held that the issue had not been heard and finally decided in the former suit. The facts in that case therefore were very different from the facts in the present case, for the very decision of the appeal court showed that nothing had been decided on that case and the decree of the trial court on the merits was not confirmed. In the case before us though the decision of the High Court was on a preliminary point the decision, on the merits, of the trial court was confirmed that makes the decision of the High Court res judicata.

The next case to which reference has been made is Ashgar Ali Khan v. Ganesh Das (L.R. (1917) 44 I.A. 213.) In that case the appellant in pursuance of a deed of dissolution of partnership, executed a bond for the payment of some money to the respondent. He sued to set aside the bond on the ground of fraudulent misrepresentation as to the amount due. The trial court and on appeal the District Judge held that the alleged fraud was not established, and dismissed the suit. Upon a further appeal to the Judicial Commissioner it was held without entering into the merits, that the appellant could not avoid the bond as he did not claim to avoid the deed. The final court of appeal thus refused to determine the issue of fraud and dismissed the suit on another ground. In a subsequent suit by the respondent upon the bond, the appellant raised as a defence the same case of fraud. It was held that the issue raised by the defence was not res judicata since the matter had not been finally decided by the final court of appeal. That case also has no application to the facts of the present case, for in that case the final court of appeal did not decide the question of fraud and dismissed the suit on another ground. In such a case it is well-settled that there can be no res judicata where the final appeal court confirms the decision of the courts below on a different ground or on one out of several grounds and does not decide the other ground. The reason for this is that it is the decision of the final court which is res judicata and if the final court does not decide an issue it cannot be said that that issue has been heard and finally decided. In the present case, however, the result of the decision of the High Court in dismissing the appeals arising from suits Nos. 77 and 91 is to confirm the judgment of the trial court on all the issues which were common and thus it must be held that the High Court's decision does amount to the appeals being heard and finally decided.

Then strong reliance has been placed on behalf of the appellant on Shanker Sahai v. Bhagwat Sahai (A.I.R. 1946 Oudh 33.). In that case it was held that where two suits between the same parties involving common issues were disposed of by one judgment but two decrees, and an appeal was preferred against the decree in one but it was either not preferred in the other or was rejected as incompetent, the matter decided by the latter decree did not become res judicata and it could be reopened in appeal against the former. This case certainly supports the view urged on behalf of the appellant. This case also over-ruled an earlier view of the Oudh Chief in Bhagauti Din v. Bharwat (A.I.R. 1933 Oudh 531.). The reason given for the main proposition in this decision is that the court must look at the substance of the matter and not be guided by technical considerations. In view of what we have said above, we cannot agree with the view taken in that case, and must hold that it was wrongly decided insofar as it holds that even where the appeal from one decree is dismissed, there will be no res judicata.

The next case to which reference may be made is Obedur Rahman v. Darbari Lal (A.I.R. 1927 Lah. 1.). In that case there were five appeals before the High Court, three of which had abated. There was a common issue in all the five appeals, namely, whether a certain lease had expired or not and it was urged that in view of the abatement of the three other appeals, the decision of that issue had become res judicata. The contention was over-ruled by the observation that "where there has been an appeal, the matter is no longer res judicata but res sub judice and where an appeal is not finally heard and

decided any matters therein cannot possible be said to be res judicata". This view in our opinion is incorrect. We may in this connection refer to Syed Ahmed Ali Khan Alavi v. Hinga Lal (I.L.R.(1946) 21 Luck. 586.) where it was held that where the appeal was struck off as having abated, the decision would operate as res judicata. If the view taken by the Lahore High Court is correct, the result would be that there mat be inconsistent decisions on the same issue with respect to the point involved in that case, namely, whether a certain lease had expired or not and the very object of res judicata is to avoid inconsistent decision. Where therefore the result of the dismissal or abatement of an appeal is to confirm the decision of the trial court on the merits such dismissal must amount to the appeal being heard and finally decided and would operate as res judicata.

The next case to which reference has been made is Ghansham Singh v. Bhola Singh (I.L.R. (1923) 45 All 506.). In that case there was a suit for sale on a mortgage and the trial court gave a decree in favour of the plaintiff but awarded no costs. The plaintiff appealed against the decree insofar as it disallowed costs. The defendant also appealed as to the amount of interest allowed to the plaintiff. Both the appeals were heard together and decided by one judgment, and both the appeals were allowed. The plaintiff appealed to the High Court against the decree in the defendant's appeal below but did not appeal against the decree which was in his favour with respect to costs. It was held that the fact that the plaintiff had not appealed against the decision in his appeal was no bar to the hearing of the appeal against the decree passed in the defendant's appeal below. We do not see how this case can help the appellant. The matters in the two appeals were different, one relating to costs and the other relating to interest; the rest of the judgment of the trial court was not disputed and had become final. In such a case there was no question of the plaintiff appealing from a decision in his own favour as to costs and there could be no question to the decision as to costs being res judicata in the matter of interest. The facts of the case were therefore entirely different and do not help the appellant. It may also be added that was a case of one suit from which two appeals had arisen and not of two suits.

The next case to which reference has been made is Manohar Vinayak v. Laxman Anandrao (A.I.R. 1947 Nag. 248.). In that case two suits were consolidated by consent of the parties and there were certain common issues. Appeal was taken from the decision in one suit and not from the decision in the other, and it was urged in the High Court that the decision in the other suit had become final. The High Court applied the principle that res judicata could not apply in the same proceeding in which the decision was given and added that by a parity of reasoning it could not apply to suits which were consolidated. We may indicate that a contrary view has been taken in Mrs. Gertrude Oates v. Mrs. Millicent D'Silva (A.I.R. 1933 Pat. 78.) and Zaharia v. Debia. (I.L.R. (1911) 33 All. 51.) We need not consider the correctness of these rival views as they raise the question as to whether one decision or the other can be said to be former where the two suits were decided by the same judgment on the same date. This question does not fall to be decided before us and we do not propose to express any opinion thereon. But the Nagpur decision is of no help to the appellant, for in the present case res judicata arises because of earlier decision of the High Court in appeals arising from suits Nos. 77 and 91. Panchanada Velan v. Vaithinatha Sastrail (I.L.R. (1906) 29 Mad. 333.) and Mst. Lachhmi v. Bhulli (I.L.R. (1927) Lah. 384.) are similar to the Nagpur case and we need express no opinion as to their correctness.

The next case to which reference has been made is Khetramohan Baral v. Rasananda Misra (A.I.R. 1962 Orissa 141.). In that case six suits were heard together mainly because an important common issue was involved even though the parties were not the same and the properties in dispute were also different. The decision in one of the suits was not challenged in appeal while appeals were taken from other suits. The High Court held that in such circumstances the decision in one suit from

which no appeal was taken would not be res judicata in other suits from which appeals were taken. In these cases the parties and properties were different and we do not think it necessary to express any opinion about the correctness of this decision. The facts in the present case are clearly different for the parties are the same and the title to the properties in dispute also depended upon one common question relating to jointness or separation.

A consideration of the cases cited on behalf of the appellant therefore shows that most of them are not exactly in point so far as the facts of the present case are concerned. Our conclusion on the question of res judicata raised in the present appeals is this. (Where the trial court has decided two suits having common issues on the merit and there are two appeals therefrom and one of them is dismissed on some preliminary ground, like limitation or default in printing, with the result that the trial court's decision stands confirmed, the decision of the appeal court will be res judicata and the appeal court must be deemed to have heard and finally decided the matter. In such a case result of the decision of the appeal court is to confirm the decision of the trial court given on merits, and if that is so, the decision of the appeal court will be res judicata whatever may be the reason for the dismissal. It would be a different matter, however, where the decision of the appeal court does not result in the confirmation of the decision of the trial court given on the merit, as for example, where the appeal court holds that the trial court had no jurisdiction and dismisses the appeal even though the trial court might have dismissed the suit on the merits.) In this view of the matter, the appeals must fail, for the trial court had in the present case decided all the four suits on the merits including the decision on the common issues as to title. The result of the dismissal on a preliminary ground of the two appeals arising out of suits Nos. 77 and 91 was that the decision of the trial court was confirmed with respect to the common issues as to title by the High Court. In consequence the decision on those issues became res judicata so far as appeals Nos. 365 and 366 are concerned and s. 11 of the Code of Civil Procedure would bar the hearing of those common issues over again. It is not in dispute that if the decision on the common issues in suits Nos. 77 and 91 has become res judicata, appeals Nos. 365 and 366 must fail.

We therefore dismiss the appeals with costs, one set of hearing fee.

Appeals dismissed.

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