SUPREME COURT OF INDIA

Gangai Vinayagar Temple

Vs.

Meenakshi Ammal

(Markandey Katju and Asok Kumar Ganguly JJ.)

C.A.No.4227 of 2003

03.09.2009

ORDER

In view of divergence of opinion in terms of detailed separate judgments, we direct that this matter may be placed before another Bench, to be nominated by Hon'ble The Chief Justice.

MARKANDEY KATJU, J.

1. This appeal by special leave against the impugned judgment and order dated 6.1.2003 of the High Court Madras passed in L.P.A. No. 17 of 1998.

2. Heard learned counsel for the parties and perused the record.

3. The appellants are the Trustees of Shri Gangai Vinayagar Temple, Thirumudi Nagar, Pondicherry.

They had executed a lease deed on 8.11.1967 in favour of one Kanniah Chettiar in respect of a plot of land on which the lessee was to erect a theatre. The lease was for a period of 15 years commencing 1.1.1968.

4. The original lessee died after constructing the theatre and his widow filed a suit being O.S 125 of 1976, which came to be later renumbered as Suit No. 5 of 1978, impleading therein the temple as the first respondent and the members of the Trust Committee as respondent Nos. 2 to 6. Three persons who were alleged to be those to whom the site on which the theatre stood was sought to be sold by the Trustees, were also impleaded as defendant Nos. 7 to 9. The prayer made in Suit No. 5 of 1978 was for an injunction restraining the defendants from interfering with the plaintiff's possession till the expiry of the period of lease.

5. During pendency of the said suit (Suit No. 5 of 1978), the Trustees filed two suits being numbered as O.S. Nos. 6 of 1978 and 7 of 1978, claiming arrears of rent from the lessee. All these three suits were tried together and a common judgment was delivered. The trial court held that the lessee was entitled to retain possession of the property for the duration of the lease. This finding was given in view of the statement made by the defendants in their written statement that they had no intention to interfere with the plaintiff's possession till the expiry of the lease. Accordingly, Suit No. 5 of 1978 was dismissed.

6. The Trustees in their additional written statement filed in O.S No. 5 of 1978 had pleaded that the property was the personal property of the temple and the Trustees. Taking note of this plea the trial court framed an issue being issue No. 2 in O.S. No. 5 of 1978 as follows:

Whether the suit property is not the personal property of Sethuraman Chettiar and whether the plaintiffs are not estopped from questioning the title of the landlord or his vendors ?"

7. The lessee or the plaintiff did not question the title of the Trust at any point of time.

8. In O.S. Nos. 6 of 1978 and 7 of 1978, the trial court framed issue No. 3 which was decided along with issue No. 2 in O.S. No. 5 of 1978. In deciding issue No. 2, the trial court went into the question whether the temple was a public temple or a private temple, and whether permission from the statutory authorities was required for effecting the sale of the property to defendant Nos. 7 to 9. Suit O.S. No. 6 of 1978 was decreed in part while O.S. No. 7 of 1978 was dismissed.

9. The lessee filed an appeal against the decree in O.S. No. 6 of 1978. No appeal was filed against the judgment in O.S. No. 5 of 1978. The lessor also did not file any appeal against the dismissal of his suit, O.S. No. 7 of 1978.

10. The learned Single Judge of the High Court who heard the appeal against the judgment in O.S. No. 6 of 1978 rejected the objection raised by the learned counsel for the temple and its Trustees that the appeal was barred by the principle of res judicata. That objection was on the ground that the finding recorded on issue No. 2 in O.S. No. 5 of 1978 had become final as no appeal had been filed against the judgment in O.S. No. 5 of 1978.

11. The learned Single Judge also held that the temple is a public temple and that the property belonging to the temple cannot be alienated without obtaining the requisite permission from the statutory authorities. The learned Single Judge, thus, reversed the judgment of the trial court on issue No. 3 in O.S. No. 6 of 1978.

12. The appellant then filed an appeal before the learned Division Bench of the High Court against the judgment and order of the learned Single Judge which was also dismissed. Hence, this appeal before us by way of special leave.

13. We have heard learned counsel for the parties at great length. Shri Jaideep Gupta, learned senior counsel appearing for the appellant submitted that the finding in the judgment in O.S. No. 5 of 1978 had become res judicata because no appeal had been filed against the judgment in the aforesaid suit. On the other hand, Shri L. Nageshwar Rao, learned senior counsel, assisted by Shri G. Masilamani, learned senior counsel, submitted that the finding in O.S. No. 5 of 1978 had not become res judicata.

14. I am not inclined to agree with the submission of the learned counsel for the appellant for the simple reason that the prayer in O.S. No. 5 of 1978 was only that the plaintiff/lessee should not be evicted by the defendants' landlord forcibly. In their written statement in the aforesaid suit, the defendants (appellants before us) stated that they were not going to forcibly evict the plaintiff-lessee. Once this statement was given in the written statement by the defendants in O.S. No. 5 of 1978, the aforesaid suit (O.S. No. 5 of 1978) should have been straightway dismissed, as the defendants had stated that they were not going to forcibly evict/dispossess the plaintiff. It was wholly unnecessary for the trial court to go into any other question, including the question of title in O.S. No. 5 of 1978.

15. In this connection we may refer to Section 11 of the CPC which states :

"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 6 parties under whom they or any of them claim, litigating under the same tile, 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".

16. The question sometimes arises as to the meaning of the expression "matter directly and substantially in issue". One of the tests to decide whether a matter is directly and substantially in issue or only collaterally and incidentally in issue, as laid down in the decision of this Court in Sajjadanashin Sayed (D) by Lrs. vs. Musa Dadabhai Ummer and others (2000) 3 SCC 350 (vide paragraph 18), is whether it was necessary to decide the said issue.

17. In the present case, it is obvious that once the defendants had conceded that they were not going to forcibly evict the plaintiff-respondents, then the suit should have been straightway dismissed on this ground alone, and it was not necessary for the trial court to have gone into any other issue, including the issue of title.

18. In Tamil Nadu Wakf Board vs. Larabsha Darga, Panruti (2007) 13 SCC 416, the facts were that the plaintiffs claimed that the suit property was their private property and was not wakf property. The High Court in the impugned judgment gave a finding that the suit property was wakf property and was not a private trust property.

This Court held that the High court had no occasion to consider whether the property was private wakf or public wakf. This Court held that the subsequent suit for a declaration that the property belongs to wakf-alal-aulad is not barred by the principle of res judicata.

19. In my opinion, the trial court unnecessarily went into the question of title etc. when it should have straightway dismissed the suit being O.S. No. 5 of 1978 in view of the fact that the defendants had stated in their written statement that they were not going to forcibly evicit the plaintiff, but would only take action in accordance with law.

20. For the foregoing reasons I find no merit in this appeal and the same is accordingly dismissed.

No costs.

....J.

(Markandey Katju) New Delhi;

03 September, 2009 8 REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL NO.4227 OF 2003 Gangai Vinayagar Temple & Ors. ...Appellant(s) Meenakshi Ammal & Ors. ...Respondent(s)

GANGULY, J.

1. I have read the draft judgment prepared by my learned brother, Justice Markandey Katju in this appeal and which was sent to me on 14.8.2009. Unfortunately, I cannot agree with the draft judgment, rendered by His Lordship, dismissing the appeal.

2. I am of the view that the appeal should be allowed and the reasons for the said view are stated herein below.

3. This appeal has been filed on behalf of the temple by the trust committee and also by one of the trustees impugning the judgment and order of Madras High Court 9 dated 6.1.2003 whereby the High Court dismissed the appeal filed by the present appellants, inter-alia, holding that there is no merit in the appeal.

4. The question involved in the appeal would appear from the discussion of the relevant facts in this case.

5. The property in question belonged to the appellants and was leased out to respondent Nos. 1 to 6 for a period of 15 years with effect from 8.11.1967 and which expired in 1983.

6. On or before 1.7.1976, the property in question was sold by the appellants to defendant Nos. 7, 8 and 9 and to that effect a notice was given to the lessees on 14.10.1976 calling upon them to pay the outstanding arrears of rent upto 1st July, 1976 to the appellants.

7. Thereupon, the lessees, the respondent Nos. 1 to 6 filed a Suit which was ultimately numbered as OS 5 of 1978, inter-alia, alleging that the appellants have illegally transferred the property to the defendant Nos. 7 to 9 who were seeking to interfere with the possession of the respondents and as

such an injunction was sought against such interference.

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8. The appellants also filed two Suits, namely, OS 6 and OS 7 of 1978 claiming the arrears of rent till the date of transfer of property to defendant Nos. 7 to 9 i.e 1.7.1976 from the respondent Nos. 1 to 6.

9. All the Suits were heard together.

10. Of these three Suits, OS 5 of 1978 filed by the respondent Nos. 1 to 6 was dismissed and no appeal was filed therefrom. OS 7 of 1978 was also dismissed, no appeal was filed from it either.

11. OS 6 of 1978 was partially allowed and only against the judgment and decree in OS 6 of 1978, an appeal was filed by the respondents 1 to 6.

12. These facts are not disputed.

13. The questions which arise for consideration in this case is whether the Court while entertaining an appeal from judgment and decree in Suit `A' can reverse a finding rendered in Suit `B', especially, when no appeal was filed from the findings rendered in Suit 'B'?

14. As a necessary corollary to the aforesaid issue is whether the findings reached in Suit `B', being 11 binding between the parties inter-se, can be modified in an appeal from Suit `A' in view of the bar of Res- Judicata.

15. Arising out of these two questions is a third question of general importance about the importance of the principle of Res-judicata which is based on high principle of public policy in the administration of justice. Whether such principles can be ignored by courts, inter-alia, on the ground that the finding reached by a Court of competent jurisdiction in another Suit was unnecessary and whether this Court in exercise of its discretionary jurisdiction under Article 136 should step in to prevent an erosion of the doctrine of Res-judicata.

16. Before answering these questions, I would like to examine the necessary pleadings, the issues framed and the findings in the Suits in question.

17. OS 5 of 1978 In this suit the plaint has been filed by respondent Nos. 1 to 6 challenging the sale of the property by the appellants in favour of defendant Nos. 7 to 9 and while challenging the same the following averments have been made:

12 ".....They (the appellants herein) have no right to sell the property as the same is trust property belonging to the 1st defendant and such alienation would be totally void being a breach of trust....."

18. In paragraph 5 of the plaint, it is further averred as under:

"...The alienation in favour of the defendants 7 to 9 being void, they have no title to the property..."

(Emphasis supplied) 19.Opposing the plaint, in the written statement which was filed by the present appellants it was stated that the suit is highly speculative in nature. It was also asserted that the sale made by the present appellants in favour of defendant Nos. 7 to 9 is valid in law and it was made clear that the plaintiff in the said suit (respondent No. 1 to 6 herein) have no right to challenge the transfer of ownership by the landlord as they admitted the title of the defendants (the appellants herein).

20.An additional written statement was filed in that suit by the appellants herein in which in paragraph (1) the following averments were made:

"1) These defendants submit that the plaintiff is estopped from either questioning the title of these defendants 13 with respect to suit schedule mentioned property or about transfer of the suit schedule mentioned property in favour of defendants 7 to 9."

(Emphasis supplied) 21.In the written statement which was filed in the said suit by the defendant Nos. 7 to 9, it was stated that the plaintiffs (respondents 1 to 6) have no cause of action for filing the suit and it is also asserted that the alienation made in favour of defendant Nos. 7 to 9 is legal and valid.

22.On the basis of those pleadings between the parties, several issues are framed. The relevant issue for our consideration and which was framed in OS 5 of 1978 is as follows:

"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?"

OS 6 of 1978 23.The relevant issue No. 3 in OS 6 of 1978 is as follows:

"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."

OS 7 OF 1978 24.Similarly, Issue No. 3 in OS 7 of 1978 is as follows:

14 "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 Institution Act."

25.As noted above, all the Suits were tried together and after trying all these issues, the learned trial Court reached the following finding:

"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 u/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-title."

(Emphasis supplied).After reaching the aforesaid findings in the operating portion of the judgment, the trial Court by its order dated 6.11.1982 held as under:

"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 15 rear portion and it dismissed with cost."

27.Against the said judgment and decree, an appeal was filed by the lessees i.e respondent Nos. 1 to 6 herein only against the decree of the II Addl. District Court, Pondicherry dated 6.11.1982 in O.S. No. 6/78.

This is clear from page 84 of the paper book.

28.In the said appeal before the learned Single Judge of the Madras High Court, the present appellants were parties and they specifically raised the question that the finding of title in favour of the present appellants by trial Court cannot be disturbed by the High Court as it was not hearing any appeal from the judgment in O.S. 5 of 1978.

29.Ignoring that objection, the learned Single Judge of the High Court held there was no occasion or need for the learned trial Judge to frame the issue, namely, "whether the suit property is not the personal property of Sethurama Chettiar and whether the plaintiffs are not estopped from questioning the title of the landlord or his vendors....." The learned Single Judge of the High Court held that the finding given by learned trial judge on the private nature of the property and on title in favour of the appellant was 16 wholly irrelevant and unnecessary. In the concluding paragraph of a rather lengthy judgment, the learned Single Judge held as follows:

"In the result, the appeal succeeds and stands allowed in part to the extent that the findings of the learned trial Judge given under issue No.2 in O.S. No.5 of 1978 and issue numbers 3 and 4 in O.S. No.6 and 7 of 1978 alone are hereby set aside and in respect of the relief claimed and decreed in part in O.S. No.6 of 1978, the appeal fails and accordingly it is dismissed partly. Parties to bear own costs".

30.It will thus appear that even though appeal was only from the judgment and decree of trial Court in OS No.6 of 1978, the learned Single Judge in appeal set aside findings reached in OS No.5 of 1978 and OS No.7 of 1978.

31.Against the judgment of the Single Judge, an appeal was filed before the Division Bench of the High Court by the present appellants.

32.The Division Bench of the High Court also came to a finding that the issue No.2 in O.S. 5 of 1978 was wholly unnecessary and is not reflective of the pleas that had been taken by the parties and the findings on that issue cannot be regarded as constituting the immediate foundation for the ultimate decision in the 17 suit and therefore the bar of Res-judicata will not apply.

33.Hon'ble Justice Katju in the judgment prepared by His Lordship has accepted the said view of the High Court and dismissed the appeal. Unfortunately, I cannot concur with His Lordship.

34.Several questions fall for consideration in this case.

35. The first is one of the framing of issues. Issues can be of two kinds; issues of fact and issues of law vide Order XIV Rule 1 (1) (a) (b) of the Code of Civil Procedure (for short "the Code").

36. Order XIV Rule 1(1) of the Code enjoins that issues arise when a material proposition of fact or law is affirmed by one party and denied by the other.

Therefore, issue is a disputed question upon which the parties are at variance and it is the duty of the Court to ascertain that, vide Order XIV, Rule 1(5) of the Code. Therefore, issues are those disputed questions on which the parties are desirous of obtaining the decision of the Court (Black's Law Dictionary 8th Edition, 831).

18 37.In the instant case from the pleadings which have been discussed above, it appears that in the plaint an issue relating to title of the present appellant in respect of the temple property was raised by the lessees i.e. respondent Nos. 1 to 6 herein and consequently a dispute has also been raised about the character of the temple property and the lessees are claiming that the property is a public trust.

38.The appellants herein in their written statement and in the additional written statement controverted those contentions and specifically questioned the competence of the lessees (respondent Nos. 1 to 6) to raise any dispute as regards the title of the present appellant.

39.Therefore, within the meaning of Order XIV Rule 1 of the Code, an issue has to be framed by the Court about (a) the title of the present appellants and also about (b) the nature and character of

the temple property.

Once such issues are framed, it is the duty of the Court to pronounce its judgment on those issues and the trial Court has done that and from which no appeal has been filed.

40.It has been held by the High Court and it has also been argued before us on behalf of respondents No.1 to 19 6 that the bar of Res-judicata will not apply as the aforesaid two questions were not `directly and substantially in issue' in OS 5 of 1978. Now, what is `directly and substantially in issue' has not been defined in Section 11 of the Code but it has been explained in Explanation III as follows:

"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."

41.Let us look at the provisions of Order XIV Rule 1(1), which is set out below:

"1. Framing of issues: (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other."

42.On a comparison between the two provisions set out above, I discern a conceptual proximity between the two. It is thus clear when an issue has been framed in a case by the Court and a finding has been reached on the same issue, the said finding, in view of Explanation III to Section 11 of the said Code, is one which has been directly and substantially in issue in a former suit between the same parties.

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43. Hon'ble Mr. Justice Katju in support of His Lordship's conclusion that those two questions are not directly and substantially in issue in this case relied on two judgments of this Court. The first decision on which reliance has been placed was rendered in the case of Dadabhai Ummer and Ors. - 2000 (3) SCC 350.

44. In Sajjadanashin (supra) learned Judges considered the distinction between something which is

`directly and substantially in issue' and something which is `collaterally and incidentally in issue'. In doing so, learned Judges relied on Mulla's Civil Procedure Code and various other treaties. In paragraph 18 of Sajjadanashin (supra), learned judges summarized the principle by saying "a matter in respect of which relief is claimed in an earlier suit" can be said to be generally a matter "directly and substantially in issue but it does not mean that if the matter is one in respect of which no relief is sought it is not directly or substantially in issue. It may or may not be". (Para 18, Page 359 of the report).

45.Therefore, it is clear that Mulla has not given any definite opinion and made it clear that answer to such a question depends on "the facts of each case". The test is to find out whether the issue was "necessary"

21 to be decided for adjudicating on the principal question and was decided.

46.In the instant case in the plaint, the respondents 1 to 6 directly challenged the right of the trustees to alienate their property inasmuch as they have averred that the property is a public trust and cannot be alienated without sanction under Section 26 of the Act and alienation which has been made by the trustees in favour of defendant Nos. 7 to 9 is void as they have no title. This is the clear case in the plaint.

47.Therefore, unless a decision on this aspect and the title of the trustees is rendered, the further decision, namely, the dismissal of the suit cannot be reached. It may be a suit for injunction for an order restraining the defendant Nos. 7 to 9 to interfere with the possession of the lessees but nonetheless the question of title of the trustees was prominently raised and the pleadings to that effect have already been referred to above.

48.As a legal proposition, it is well settled that a question of title may arise even in a suit for injunction relating to possession. In this connection 22 reference may be made to the decisions of this Court in the following cases:

1. Sajjadanashin Sayed Md. B.E. Edr(D) by Lrs. SCC 350.

Alagammal and others - (2005) 6 SCC 202.

Ramakrishna Tapovanam and others - (2005) 10 SCC 51.

5 SCC 647 49.It may be true in the instant case the trustees have taken a stand before the Court that the possession of the lessees will not be interfered during the tenure of the lease and save and except in accordance with law. But that does not mean that the question of title of the trustees which has been raised and decided is not a matter which is directly or substantially in issue.

50.In order to give a pronouncement for dismissal of OS 5 of 1978, it was very crucial for the Court to come to a finding that defendant Nos. 7 to 9 in the suit were landlords having validly purchased the said property from the trustees of the temple, as it was alleged in the plaint that the trustees of the temple have 23 unlawfully transferred the property to the defendant Nos. 7 to 9.

51.The trustees - appellants herein, can validly transfer the temple property in favour of defendant Nos. 7 to 9 only if they have title to the property and only if defendant Nos. 7 to 9 have acquired the valid title to the property, they can initiate steps for dispossession of the lessees i.e. respondent Nos. 1 to 6 herein.

52.Therefore, the question whether the appellants had title to the property and can effect a valid transfer of the property in favour of defendant Nos. 7 to 9 is inextricably connected with the ultimate decision of dismissal of the suit.

53. It has been held by this Court in Vithal Yeshwant (2) SCR 285 at page 290:

"...It is well settled that if the final decision in any matter at issue between the parties is based by a Court on its decisions on more than one point - each of which by itself would be sufficient for the ultimate decision - the decision on each of these points operates as res judicate between the parties".

54. The said decision has further been relied on by this Vittal Rao and others - (2005) 4 SCC 120.

55. In Sajjadanashin (supra) this Court held whether a question is directly and substantially in issue has to be decided on examination of the plaint, the written statements.

56.Going by this test, I am of the opinion that the question of title of the appellant and the nature of the trust property is directly and substantially in issue. The lessees - respondent Nos. 1 to 6 herein invited a finding on these issues. Having done so, they cannot wriggle out of the same just because the finding had gone against them in the judgment and more so when they did not file any appeal against such finding. The said finding can only be reversed by a competent court only in a manner known to law.

57. So the decision of this Court in Sajjadanashin (supra) does not support the case of the lessees - respondent No. 1 to 6 in this case.

Larabsha Darga, Panruti - (2007) 13 SCC 416, does not show throw any light on the controversy in this case.

In Tamil Nadu Wakf Board (supra) it has been held in 25 paragraph 11 at page 421 of the report that in the earlier Second Appeal, the High Court had no occasion to consider whether it was a private wakf or a public wakf. The plaintiff's claim in this suit was that the suit property was a private property and not a private wakf property. On these claims, the High Court rendered its finding in the Second Appeal that the suit property was a wakf property and is not a private trust property. The learned Judges expressed their agreement with the conclusion of the High Court in the said Second Appeal and held that the same has no bearing on the issue in the latter proceeding.

59. In the said judgment there is no discussion about the principle of Res-judicata. Head Note `B' of the said judgment refers to Section 11 of the Civil Procedure Code on Res-judicata, but in the said judgment there is no discussion on the concept of Res-judicata.

Therefore, in Tamil Nadu Wakf Board (supra) no point on law was decided. It was a decision on the facts of that case. Therefore, the said decision has hardly any relevance to decide the controversy in this case.

60.So the bar of Res-judicata under Section 11 of the Code is attracted.

61. Res-judicata is an ancient doctrine of universal application and permeates every civilized system

of jurisprudence. This doctrine encapsulates the basic principles in all judicial systems which provide that an earlier adjudication is conclusive on the same subject matter between the same parties. The principles of Res-judicata reflect `a wisdom that is Ramnandan Prasad Narayan Singh & Ors. - 43 I.A. 91, pg. 98]. In this judgment the Privy Council traced the principle of Res-judicata from the Old Hindu Text of Katyayana. Res-judicata was also expounded in Greek custom and also by the Roman jurists. Reference may be made to Peter Barnett's treatise on `Res Judicata, Estoppel, and foreign Judgments' Oxford University Press. In footnote 13 at page 8, the learned author has referred to Digest Book 50 Chapter 17, which quotes the maxims : res judicata pro verifate accipitur (a thing adjudicated is received as the truth); Justinian, Institutes IV 13.5: `si judicio tecum actum fuerit sive in rem sive in personam, nihilominus ob id actio durat, et ideo ipso jure posteo de eadem re adversus te agi potest: sed debes per exceptionem adjurari': if a defendant omits, either intentionally or negligently, to raise a question of res judicata by an exceptio, no such question will be submitted whereas, if such a question is properly raised, it must be considered whether the issue has been rendered res judicata pro veritate accipitur.].

(Emphasis supplied)

62. English Common Law which is influenced by Roman Law also shares the same concept and it has been held by 99, at 108 that `Res-judicata is entirely consistent with the rule of the Civil Law'.

63.Paul A. McDermott in his famous treaties on Res- judicata and Double Jeopardy referring to the concept of Res-judicata held:

"Such an idea is not only a fundamental principle of the common law but is also to be found in Roman law, Hindu law, African tribal law, Native American Indian law, Canon law and many modern civil codes. Such apparently universal acceptance of the need for a rule of this kind has led one English judge to eulogise it in the following terms:

"the rule of res judicata, while founded on ancient precedent, was dictated by a wisdom which was for all time."

64.In the words of Coke, Res-judicata stands for the "inviolable sanctity of the record" which was of "so high and conclusive a nature as to admit of no contradiction thereof". It has been said as nature abhors a vacuum, so "the common law... abhors infiniteness". [See page 19 of Paul A. McDermott - Res Judicata and Double Jeopardy].

65.In the recently published Woolf Report in England on Access to Justice, the importance of this doctrine has been underlined, especially having regard to the public interest content in this doctrine, namely finality in litigation.

66.Thus, the doctrine of Res-judicata is founded on three principles which are non-negotiable in any civilized version of jurisprudence. They are:

1. nemo debet bis vexari pro una et eadem causa: no man should be vexed twice for the same cause;

2. interest republicae ut sit finis litium: it is in the interest of the State that there should be an end to a litigation; and

3. res judicata pro veritate occipitur: a judicial decision must be accepted as correct, if I may add, in the absence of a challenge.

(See: Code of Civil Procedure Vol. I, Justice C.K. Thakker, Page 119)

67.In Corpus Juris (Vol. 34 p. 743) explaining the importance of this doctrine, the following principles have been laid down:

"Res judicata is a rule of universal law pervading every well- regulated system of jurisprudence, and is put upon two grounds, embodied in various maxims of the common law; the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation; the other, the hardship to the individual that he should be vexed twice for the same cause."

68. These very principles have been accepted by a Constitution Bench of this Court in Daryao & Ors. V. State of U.P. & Ors. - AIR 1961 SC 1457 (1462).

69. In Daryao (supra), it has also been held that Section 11 of the said Court is not exhaustive of the said principle of Res-judicata. And this was pointed long - 1920-21 (48) I.A. 187 at page 194 of the report.

70.Therefore, the importance of the doctrine of Res- judicata can hardly be over emphasized.

71. The question whether finding reached by a Court of competent jurisdiction in a previous suit between the same parties should operate as Res-judicata or not does not depend on the reasons on which the said finding is based. In this connection I may refer to the observations of Chief Justice Rankin in a full Bench decision of the Calcutta High Court in the case The Chief Justice held as under:

" ..the question whether the decision is correct or erroneous has no bearing upon the question whether it operates or does not operate as res-judicata"

72. The learned Chief Justice further held as under:

"...To say, as a result of such disorderly procedure, that the previous decision was wrong on a point of law, and that therefore it may be disregarded, is an indefensible form of reasoning."

73.If the Court reaching the finding has the jurisdiction to do so, such a finding, in the absence of an appeal, cannot be diluted merely on the ground that the reasoning is weak or that the finding is unnecessary, even though it was on a question which was directly and substantially in issue between the parties.

74.An action at law cannot be equated with a game of chess where the players can change and choose their stand according to their convenience. Some sanctity has to be attached to a finding which has been reached by a Court on the basis of the pleadings between the parties and if such a finding has been invited at the instance of a party, that party must be held to be bound by such finding unless an appeal is carried by the aggrieved party against such a finding.

75. In a three Judge Bench decision in Premier Tyres 1993 Supp (2) SCC 146, this Court held that where two suits connected were tried together and a finding has been reached in one suit, such a finding becomes final in the absence of any appeal. In paragraph 4 of the report, the learned Judges have laid down the following proposition, which I quote:

"...The question is what happens where no appeal is filed, as in this case from the decree in connected suit. Effect of non- filing of appeal against a judgment or decree is that it becomes final. This finality can be taken away only in accordance with law. Same consequences follow when a judgment or decree in a connected suit is not appealed from".

76. The learned judges in coming to the said conclusion relied on the principles laid down by a Constitution Bench in its decision in the case of Badri Narayan SC 338.

77.Those principles apply on all fours in the present case.

78.Therefore, I am of the opinion that neither the Single Bench of the Madras High Court nor the Division Bench of the same High Court took a correct view in holding that the finding reached in OS 5 of 1978 or OS 7 of 1978 can be modified in the absence of any appeal from the aforesaid finding.

79.The following finding which has been reached by the learned trial Judge and is set out below stands and binds the parties:

"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 u/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-title."

(Emphasis supplied)

80.The aforesaid finding cannot be diluted or watered down in the manner in which has been done by the High Court.

81.The appeal is, therefore, allowed. There shall be no order as to costs.