

# SUPREME COURT OF INDIA

Andanur Kalamma

Vs.

Gangamma

C.A.No.423-424 of 2018

(Dipak Misra,CJI., A.M.Khanwilkar and D.Y.Chandrachud.JJ.,)

06.03.2018

## JUDGMENT

**A.M. Khanwilkar,J.,**

SLP (Civil) Nos.9728-9729 of 2005

1. These appeals, by special leave, are directed against the judgment and order dated 4th January, 2005 and order dated 11th March, 2005 passed by the learned Single Judge of the High Court of Karnataka in RFA No.410/1998 and R.P. No.124/2005, respectively, whereby the learned Single Judge confirmed the judgment and decree passed by the Trial Court dismissing the suit filed by the appellants on the ground of res judicata and also dismissed the review petition.

2. Appellants in the present appeals are the plaintiffs and the respondents are defendants in the original suit.

3. Briefly stated, Appellant No.1 is the wife of one late Sri Andanur Umapathiyappa and other appellants are his sons and daughter. Respondent No.1 is the wife of one late Sri Belakerappa and the other respondents are his sons and daughter.

4. The father of late Sri Andanur Umapathiyappa (late Andanur Kotrappa) was a defaulter under the provisions of the Income Tax Act to the extent of Rs.2,600/-. For recovery of arrears of tax, the Income Tax Department had referred the matter to the Deputy Commissioner, Chitradurga, under Section 158 of the Karnataka Land Revenue Act, 1964 (for short, "the Act"). The land belonging to late Sri Andanur Umapathiyappa bearing Sy. No. 63 of Bisaleri Village, Davanagere Taluk, measuring an extent of 23 acres and 15 guntas, was brought to sale for the recovery of tax dues. The sale was held on 7th January, 1966 and the father of the respondents one Sri late Belekerappa was the highest bidder at Rs.2,600/- and the Assistant Commissioner who had conducted the auction sale recommended to the Deputy Commissioner Chitradurga, for confirmation of the sale.

5. The predecessor of the appellants had filed an application on 3.2.1966 for setting aside the sale. The Deputy Commissioner, vide order dated 3rd May, 1966, however, confirmed the sale. Resultantly, a sale certificate was issued sometime in the month of June, 1966 in favour of late Sri Belekerappa and he was also put in possession of the suit schedule property.

6. Appellants' predecessor late Sri Andanur Umapathiyappa S/o late Andanur Kotrappa then questioned the order dated 3rd May, 1966 before the Mysore Appellate Tribunal by filing Appeal No.486/1967 (LR) under Section 49 of the Mysore Land Revenue Act, 1964. He asserted that without deciding his application for setting aside the sale dated 3rd February, 1966, the Deputy Commissioner was not justified in passing a final order to confirm the auction sale. The Tribunal by its order dated 27th September, 1967 allowed the appeal and set aside the sale, on the ground that under Section 177 of the Karnataka Land Revenue Act, 1964, the Deputy Commissioner could confirm the sale only after the application for setting aside the sale is rejected. Accordingly, the Tribunal after setting aside the sale, remanded the matter to the Deputy Commissioner, Chitradurga, to conduct fresh enquiry into the allegation made by the appellant in his application dated 3rd February, 1966 and to dispose of the same in accordance with law.

7. Pursuant to the remand order passed, the petition filed by the appellants' predecessor was taken up for hearing on 8th June, 1969 by the Deputy Commissioner and since no one appeared, the Deputy Commissioner dismissed the same for non-prosecution. Restoration application filed to restore the said application was also rejected by the Deputy Commissioner.

8. Appellants' predecessor then carried the matter to the Mysore Revenue Appellate Tribunal by filing an appeal against the orders passed by the Deputy Commissioner, being Appeal No.167/1971. The same was also rejected by an order dated on 13th April, 1971 as time barred. A review petition filed to review the aforesaid order was also rejected by the Tribunal.

9. Appellants' predecessor being aggrieved, filed a writ petition being W.P. No.1810/1971 before the High Court of Karnataka. The High Court while rejecting the writ petition by its order dated 23rd October, 1973, however, observed that if for any reason the sale was not yet confirmed by the Deputy Commissioner, Chitradurga, after the remand order passed by the Tribunal in appeal No.486/1967 (LR) and if the writ petitioner (predecessor in title of the appellants) deposited the sale amount, then the Deputy Commissioner could exercise his suo-motu power to set aside the sale as provided in proviso to Section 177 of Mysore Land Revenue Act.

10. The respondents in the petition challenged that decision by filing an appeal before the High Court bearing number W.A. No.152/1973, being aggrieved by certain observations and directions issued by the learned Single Judge while rejecting the writ petition. The Division Bench of the High Court after referring to the provisions of Section 177 of the Act observed that in view of the dismissal of the writ petition, there was no application pending for setting aside the sale. Even so, since the Deputy Commissioner was bestowed with discretion to set

aside the sale, he could do so on such conditions as he deemed proper, on its own merits and in accordance with the law. The Division Bench also observed that the learned Single Judge while rejecting the petition could not have made any further observations or issued any directions in the writ proceedings. With the aforesaid observations, the Division Bench of the High Court by its order dated 7th January, 1975 allowed the appeal.

11. During the pendency of the writ appeal, the predecessor of the appellants had made an application before the Deputy Commissioner on 24th November, 1973 under Section 177 of the Act, inter alia, requesting the authority to set aside the auction sale held on 7th January, 1966 as envisaged in the proviso to Section 177 of the Mysore Land Revenue Act. At the first instance, by an order made on 9th June, 1975 the application was rejected and on an application filed for review of the said order, the Deputy Commissioner passed an order on 29th September, 1975, holding that the review petition was maintainable.

12. The respondents, aggrieved by the aforesaid order of the Deputy Commissioner, filed a revision petition before the Karnataka Appellate Tribunal being No.304/1973, inter alia, questioning the said order on the ground that the Deputy Commissioner had no jurisdiction under Section 177 of the Act to exercise his suo-motu powers on an application filed by a defaulter. The Tribunal initially allowed the petition by its order dated 4 th August, 1978 and on a review petition filed by the appellants being No.27/1978, it allowed the review petition and set aside the order passed in revision petition No.304/1973. Further, vide order dated 24th March, 1980, the Tribunal directed that the revision petition be posted for hearing afresh on merits, and by subsequent order dated 30<sup>th</sup> January, 1981 it rejected the revision petition filed by the respondents.

13. The respondents thereafter filed a writ petition before the High Court being No.14012/1981, inter alia, questioning the orders passed by the Tribunal in revision petition No.304/1973 dated 4.8.1978, 24.3.1980 and 30.1.1981, respectively. The learned Single Judge of the High Court by his order dated 31st July, 1989 was pleased to set aside the aforementioned orders passed by the Tribunal in the revision petition and made an observation that the auction sale had been confirmed long back.

14. Feeling aggrieved, the appellants filed a writ appeal, being Appeal No.2176/1989. The Division Bench of the High Court by its order dated 8th December, 1989 rejected the appeal, holding that the view taken by the learned Single Judge with regard to Section 177 of the Karnataka Land Revenue Act did not call for any interference.

15. Appellants, thereafter, filed a suit being O.S. No.27/1990 before the learned Civil Judge (Senior Division), Davanagere, with a prayer to declare that they are the owners of the suit schedule property and also for a direction to the respondents to re-deliver the possession of the property. After referring to the earlier proceedings before the Deputy Commissioner, Karnataka Revenue Appellate Tribunal and before the High Court, appellants asserted that after disposal of the appeal by the Mysore Appellate Tribunal in appeal No.486/1967 (LR), wherein the confirmation of sale made by the Deputy Commissioner, Chitradurga was set aside and the matter was remanded back to the Deputy Commissioner, for fresh disposal in

accordance with law, no steps have been taken for confirmation of sale and for issue of sale certificate by the Deputy Commissioner, Chitradurga till date of the suit. Therefore, various orders passed in different proceedings before the revenue authorities and the Tribunal will not and cannot affect the right, title and interest of the appellants in any way in respect of the suit schedule property. The appellants, therefore, asserted that they are the owners of the suit schedule property. Appellants also assert that their predecessor, during the pendency of the various proceedings before various forums, had deposited the entire amount due to the Income Tax Department and, therefore, the confirmation of the sale subsequent to receipt of income tax dues does not arise. Appellants would further assert that though the respondents were put in possession of the suit schedule property, under the guise of sale certificate issued by the Deputy Commissioner and since the same had been set aside by the Tribunal in Appeal No.486/1967 (LR), their possession is litigious possession and it would not give them any right to continue in possession of the suit schedule property. It is their further assertion in the suit that though the appellants demanded the respondents to hand over the possession of the suit schedule property, the respondents have refused to do the same and therefore, appellants were constrained to file the suit for declaration and possession of the suit schedule property. The cause of action for filing the suit, according to the appellants, arose on or about 1st May, 1990 and also in July, 1989, when the High Court dismissed the appellants' Writ Appeal No.2176/1989.

16. The respondents resisted the suit. According to them, in view of the proceedings and the order passed in W.P. No.14012/1981 dated 31st July, 1989, the averments in the plaint regarding the proceedings before the Deputy Commissioner and before the revenue authorities have no consequence at all and by virtue of those orders, the parties have been restored to the original status quo as on 3rd May, 1966 i.e. the date of confirmation of sale certificate by the Deputy Commissioner, and there is no necessity to grant of fresh sale certificate. Apart from the above defence, there is no other defence pleaded by the respondents in the written statements filed before the trial Court.

17. The Trial Court, based on the pleadings of the parties to the suit, framed six issues for its consideration, as follows:-

- "(i) Whether plaintiffs prove that they are the owners entitled for possession of the suit property?
- (ii) Do they further prove that they are entitled for possession of the suit property?
- (iii) Whether plaintiffs suit is hit by Sec. 11 of CPC as contended in the written statement?
- (iv) Whether defendants are entitled for compensatory costs?
- (v) Whether the plaintiffs are entitled to the reliefs as prayed for?
- (vi) What order or decree?"

18. The Trial Court keeping in view the order passed by the High Court in Writ Petition No.14012/1981 and in Writ Appeal No.2176/1989, has held that the prayer made in the suit challenging the auction sale dated 3 rd June, 1966 is hit by Section 11 of the Code of Civil Procedure. To come to this conclusion, the Trial Court has traced the history of various proceedings that were initiated by the appellants' predecessor before the revenue authorities and High Court and then observed that in view of the order passed by the High Court in W.P. No.14012/1981, the suit is hit by principles of res judicata.

19. Feeling aggrieved by the judgment and decree passed by the learned Civil Judge (Senior Division), the appellants filed Regular First Appeal No.410 of 1998 before the High Court of Karnataka at Bangalore. The High Court took notice of all the proceedings that culminated with the dismissal of writ appeal filed by the appellants against the decision of the learned Single Judge dated 31st July, 1989 in Writ Petition No.14012/1981, whereby the correctness of all the orders passed by the Revenue Authorities including the Karnataka Appellate Tribunal were analysed and the plea of the appellants founded on their application dated 24th November, 1973 and 9th June, 1975 for setting aside the auction sale came to be negatived and which judgment was affirmed by the Division Bench of the High Court by dismissing the writ appeal preferred by the appellants. The High Court, taking notice of the decisions in the cases of *Shirlakoppa Town Municipality Vs. Sree Sharada Rice Mill and Others*<sup>1</sup>; *U. Nilan Vs. Kannayyan through LRs.*<sup>2</sup>; *State Bank of Travancore Vs. Mytheen Kannu Mastan Kanju*<sup>3</sup>; *Madhavi Amma Bhavani Amma and others Vs. Kunjikutty Pillai Meenakshi Pillai and others*<sup>4</sup>; *Re: Forward Construction Co. and others Vs. Prabhat Mandal (Regd.), Andheri and others*<sup>5</sup>; *Ashok Kumar Srivastav Vs. National Insurance Co. Ltd.*<sup>6</sup>; and *Re: Gulabchand Chotalal Parikh Vs. State of Gujarat*<sup>7</sup>; summed up the legal position on the doctrine of res judicata of triple test requirement regarding the factum of identity of the parties, cause of action and the subject matter. In other words, any issue that has been raised and decided and which was necessary for determining the rights and duties of the parties by a final conclusive judgment on the merits cannot be re-litigated by the same parties and a party is precluded from re-litigating the issue that has already been decided and also an issue which it could and should have brought forward in the earlier proceedings but chose not to do so. Keeping in view those principles, the High Court went on to observe as follows:

“31. The triple identity which I have referred to in the earlier paragraphs of my order assumes importance for deciding the issues which I have raised for my consideration. At the cost repetition, let me once again notice the triple requirement for the doctrine of res judicata to apply. They are, identity of the parties, cause of action and the subject matter. The identity of the parties is not in dispute nor it can be disputed by the plaintiffs. In fact, their father was agitating the auction sale held and its confirmation before various forums and after his death, the plaintiffs have stepped in to his shows (sic) to continue the proceedings till this stage. The second requirement is the cause of action. A cause of action comprises of all the facts and circumstances necessary to give rise to the relief. Before the revenue authorities, the Tribunal the primary grievance of the plaintiffs was the confirmation of sale of their immovable property held in a public auction by the Deputy Commissioner and their illegal

dispossession from the suit schedule property. Before all the forums, the plaintiffs have lost their case and those others have been confirmed by this court in the writ petitions and writ appeal filed. Thus the orders passed by the revenue authorities have become final, in the sense, auction of the immovable property by a public authority and delivery of the possession of the same is not disturbed by any of the revenue authorities or the Tribunal or by this Court; however the same is also not confirmed by the Tribunal pursuant to the remand order passed by the Mysore Revenue Tribunal in the appeal No.486/1967. Thirdly, the subject matter is the same in all the proceedings, namely, suit schedule property bearing No. 63, measuring 23 acres and 15 guntas situate at the Bisaleri village, Davanagere district.

32. The doctrine of res judicata would apply in these proceedings, for the reason, the claim in the earlier litigation was between the same parties, the cause of action and the subject matter was also the same or identical and by judicial pronouncement by a competent Court the possession of the defendants is not disturbed. Therefore, plaintiffs are precluded from re-litigating an issue that has already been decided. Even otherwise also, the plaintiffs father or at least the plaintiff's could have brought forward an issue for possession of the suit schedule property, in the earlier proceedings but chose not to do so and therefore cannot subsequently re-agitate the issue, which they could have done in the earlier proceedings. Therefore, in my view, the judgment and decree passed by the learned trial Judge requires to be sustained on the principles of res judicata., may not be on the ground that this Court while disposing of the writ petition No.14012/1989 disposed off on 31.07.1989 has observed that the order passed by the Karnataka Appellate Tribunal remanding the matter regarding the confirmation of sale has been set aside by this Court. The observations made by this Court is an apparent error on facts and that could not have been taken note of by the trial Court, while deciding the lis between the parties and that in my opinion, being an error on facts could have been ignored by the trial Court.

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(emphasis supplied)

20. On the aforementioned conclusion reached by the High Court, it proceeded to dismiss the first appeal preferred by the appellants. The appellants have approached this Court by way of special leave inter alia contending that the issue regarding confirmation of auction sale was reopened in view of the decision of the Mysore Revenue Appellate Tribunal dated 27th September, 1967. In absence of confirmation of sale and non-issuance of fresh sale certificate to the respondents, no manner of right, title or interest or whatsoever over the suit schedule property enured in favour of the respondents. The fact that the respondents' ancestor late Balakerappa was put in possession of the suit schedule property, on the basis of sale certificate and confirmation of sale on 3rd May, 1966 will not impair the interest of the appellants in any manner nor denude them from pursuing their remedy of restoration of possession of the suit property, the ownership whereof remained with the appellants. According to the appellants, the High Court as well as the Trial Court committed manifest error in invoking the principle of res judicata to non-suit the appellants and dismiss the suit for possession on the basis of their title and to declare them as owners of the suit property.

21. The respondents, on the other hand, would contend that the Trial Court as well as the High Court had justly rejected the suit preferred by the appellants as it was hit by the principles of res judicata. The respondents have supported the analysis and conclusion reached by the Trial Court as well as the High Court in this regard. They pray for dismissal of the appeal being devoid of merits.

22. We have heard Mr. Kashi Vishweshar, learned counsel appearing for the appellants and Mr. E.C. Vidya Sagar, learned counsel for the respondents.

23. The factual matrix noticed by the Trial Court and reiterated by the High Court in the impugned judgment is indisputable. In that, the predecessor in title of the appellants had committed default in paying tax for which the suit property was put to auction in which the predecessor in title of the respondents was the highest bidder. The auction sale was confirmed by the competent authority. The correctness of the confirmation of sale without deciding the application for setting aside the sale, preferred by the predecessor of the appellants, was questioned by him. The matter had reached the High Court by way of Writ Petition No.1810/1971, filed by Andanur Umapathiyappa predecessor of the appellants, which was dismissed with the observation that if the writ petitioner was willing to deposit the sale amount, the Deputy Commissioner could exercise his suo motu power to set aside the said sale as provided in terms of Section 177 of the Mysore Land Revenue Act. This observation, however was assailed by the respondents by way of Writ Appeal No.152/1973 before the Division Bench. The Division Bench allowed the said appeal. The relevant extract of the order passed by the Division Bench dated 7th January, 1975, having some bearing on the matter in issue, reads thus:

“The result of the dismissal of the writ petition is that there is no application now pending for setting aside the sale. However, under the proviso, the Deputy Commissioner has the power to exercise his discretion to set aside the sale subject to such conditions as he may deem proper, notwithstanding the fact that the application made for setting aside the sale has been rejected. Whether it is a case for setting aside the sale and on what conditions the sale should be set-aside are matters which are within the exclusive discretion of the Deputy Commissioner. This court, in the exercise of its jurisdiction, cannot direct the Deputy Commissioner to exercise the discretion if the conditions imposed by this Court are satisfied. It is not for this court to lay down any conditions. That matter should have been left open. Therefore, we allow this appeal and hold that the Writ Petition should have been dismissed without making any observation as to how the discretion under the proviso to Section 177 of the Karnataka Land Revenue Act should be exercised. No costs.”

(emphasis supplied)

With this decision, the issue regarding validity of auction sale attained finality against the appellants.

24. The matter did not rest at that as the revision petition filed by the respondents as well as the appellants in relation to application filed by the appellants for invoking the discretion of the Deputy Commissioner to set aside the auction were then made subject matter of another writ petition filed by the respondents, being Writ Petition No.14012/1981. The learned Single Judge of the High Court of Karnataka at Bangalore by judgment dated 31st July, 1989 considered the tenability of the orders passed by the Revenue Authorities and the Appellate Tribunal, in particular, orders dated 4th August, 1978, 24th March, 1980 and 31st January, 1981. The order dated 31st July, 1989 passed by the learned Single Judge is, in our opinion, crucial to answer the issue that arises for our consideration. The order dated 31st July, 1989 reads thus:

“ORDER

This Writ Petition is of the year 1981. I hope by disposing it off I would have given quietus to a controversy which appears to have arisen in the year 1966 when the predecessor in interest of the respondents one Andanur Umapathiyappa lost 26 acres of land for having defaulted in payment of income tax arrears for recovery of which sum, lands were sold by public auction and purchased by the contesting respondent who was also placed in possession immediately.

2. It is common ground that the lands have been in possession of the petitioner since the date of the auction sale and notwithstanding many endeavours made by the respondents to wrest it from the petitioner by reason of a charmed life they had managed to sustain their holding over the lands.

3. In this last ditch battle for recovery of these lands the point raised is of the tenability of an application made for setting aside the auction sale by moving the Deputy Commissioner to exercise his suo moto powers under Section 177 of the Karnataka Land Revenue Act, although auction sale having been affirmed long back. That application the Deputy Commissioner disposed off on 9.6.75, for some reasons he rejected the same. But the respondents filed another application on 17.06.1975 to the Deputy Commissioner seeking a review of the earlier order. The Deputy Commissioner having held application to be maintainable despite opposition by the petitioner a revision petition having been filed from that order before the Karnataka Appellate Tribunal, the Deputy Commissioner's order was in the first instance upheld but retracted later on a review petition and an order made dismissing the revision petition. Petitioners challenge the *suo moto* (sic) as also the order of the Deputy Commissioner dated 29.09.1975 holding a review petition before him to be maintainable.

4. Sri Gopal who appears for the auction purchaser who is aggrieved by these orders urges that respondents had any right at all to seek interference by the Deputy Commissioner under the provisions of section 177 of the land Revenue Act. This Court in *G.D. NAVAREKAR Vs. The Mysore Revenue Appellate Tribunal and others* (1973 (1) MLJ 331) has settled the law on the question of exercising of suo



moto power by a revenue authority under section 177 with particular reference to its modality, it says:

‘Suffice it to state that power is to be exercised in the interest of justice and subject to such conditions as the authority may deem proper and it does not confer a right on the petitioner to ask the Assistant Commissioner to invoke the issue.’

5. It was pointed out by this Court in the decision referred to supra, that no one has a right to move the Deputy Commissioner to exercise his suo moto powers under section 177 of the Karnataka Land Revenue Act. In this case review application having been disposed off by the Deputy Commissioner on 9.6.1975 may be even for wrong reasons as pointed out by Mr. Gopal for the petitioner, having become final it seems to me that it was wrong on the part of the appellate Tribunal to have lent support to the application made by the respondents demanding or seeking exercise of suo moto powers by Deputy Commissioner acting under Section 177 of the Karnataka Land Revenue Act. Therefore, it seems to me on this short ground the writ petition has to succeed and hence it is I allow this writ petition and quash the impugned order of the Appellate Tribunal and that of the Deputy Commissioner Annexure-C, E and F. No costs.”

(emphasis supplied)

25. This decision was challenged by the appellants by way of writ appeal before the Division Bench of the High Court which, however, was summarily dismissed vide order dated 8th December, 1989, The same reads thus:

“ORDER

The view taken by the learned Single Judge with regard to Section 177 of the Karnataka Land Revenue Act does not call for interference. Hence, this Appeal is rejected.”

With the rejection of this appeal, even the issue of tenability of application under Section 177 of the Act became final against the appellants.

26. After all these proceedings, the appellants resorted to a civil suit before the Civil Judge (Senior Division) at Davanagere, being O.S. No.27/90, for declaration of ownership and possession. In the suit, the principal issue was that in absence of an order of the competent authority confirming the auction sale and without issuing fresh sale certificate in favour of the respondents, the respondents or for that matter their predecessor in title, had not acquired any right, title or interest or whatsoever over the suit schedule property. Therefore, the possession of the suit property given to the predecessor of the respondents was required to be restored in absence of a fresh order of confirmation of sale. The argument though attractive at the first blush, has received deep attention not only of the Trial Court but of the High

Court also, as can be noticed from the analysis in paragraphs 20 and 21 of the impugned judgment, which reads thus:

“20. Admittedly, in the present case, the Deputy Commissioner without considering the application filed by the defaulter on 3.2.1966 had confirmed the auction sale of the immovable property on 7.1.1966 on the recommendation made by the Assistant Commissioner in favour of the highest bidder in the auction namely, the father of the defendants late Sri belekerappa. This action of the Deputy Commissioner was taken exception to by the Mysore Revenue Appellate Tribunal in the appeal filed by the plaintiffs father in appeal No.486/1967 (LR) and the Tribunal by its order had set aside the order of the confirmation of sale passed by the Deputy Commissioner vide his order dated 3.6.1966 and had remanded the matter to the Deputy Commissioner to pass fresh order in accordance with law after considering the application filed by the plaintiffs father. On such remand, since plaintiffs father did not appear before the Deputy Commissioner on the date fixed for hearing, the Deputy Commissioner has rejected the application for non-prosecution. The order so made has reached the finality in view of the order made by this Court in W.P.No. 1810/1971 and in W.A. No.152/1973. Even after disposal of all these proceedings, the Deputy Commissioner has not passed any fresh order in confirming the sale, pursuant to the remand order passed by the Mysore Revenue Appellate Tribunal made in appeal No.486/1967 (LR) dated 27.9.1967 and further has not issued fresh sale certificate. These factual aspects which is not disputed by the learned Counsel for appellants would demonstrate that the defendants are in possession of the suit schedule property pursuant to order of confirmation of sale passed by the Deputy Commissioner, which had been set aside by the Revenue Appellate Tribunal.

21. The other proceedings initiated by the father of the plaintiffs is to approach the Deputy Commissioner to set aside the sale by filing an application under Sec. 177 of the Act. Though, initially the Deputy Commissioner had rejected the application as not maintainable before him, on an application filed for review of his order, he had entertained the application by observing in his order that an application filed by the defaulter to initiate suo-motu powers by him under proviso to Section 177 of the Act is maintainable. The correctness or otherwise of this order was questioned by the legal representatives of the late Sri Belekerappa - the defendants before the Revenue Appellate Tribunal in Revision Petition No.304/1973 filed under Sec. 56 of the Karnataka Land Revenue Act. The Tribunal by its order dated 30.1.1981 holds that the Deputy Commissioner was justified in invoking his powers under Sec. 177 of the Act on an application filed by the defaulter to set aside the sale and therefore, has rejected the revision petition and have directed the Deputy Commissioner to consider the petition/application filed by the father of the plaintiffs under Sec. 177 of the Act in accordance with law. It is the correctness or otherwise of this order was the subject matter before this Court in W.P. No.14012/1981 and this Court while allowing the petition and setting aside the order passed by the Karnataka Appellate Tribunal in Revision Petition No.304/1973 has made a passing observation to the effect that ‘in this last ditch battle for recovery of these lands, the point raised is of the tenability of

an application made for setting aside the auction sale by moving the Deputy Commissioner to exercise his suo-motu powers under Sec.177 of the Ka.rnataka Land Revenue Act, although the auction sale having been confirmed long back. ' It is this observation of the learned Single Judge, which has been confirmed in W.A. No.2176/1989 has weighed the mind of the learned trial Judge to hold that the suit is hit by principles of res judicata. ”

(emphasis supplied)

27. As is noticed from the judgment of the leaned Single Judge of the High Court in Writ Petition No.14102/1981 dated 31st July, 1989, reproduced in its entirety in earlier part (paragraph 24) of this judgment, the entire issue with regard to the confirmation of the auction sale and the sale certificate issued in favour of the predecessor of the respondents, was the subject matter before the High Court between the same parties in respect of the same land and including the cause of action. On that finding, the Trial Court as well as the High Court non-suited the appellants by dismissing the suit filed by them for declaration of ownership and possession, being hit by the principles of res judicata, as can be discerned from the discussion in paragraphs 31 and 32 of the impugned judgment, which have been extracted in paragraph 19 of this judgment. We are in complete agreement with the analysis of facts and the conclusion arrived at by the Trial Court and affirmed by the High Court.

28. For arriving at such conclusion, the Trial Court and High Court have applied the settled legal position in reference to the decisions of this Court as noticed by the High Court in the impugned judgment. The principle of res judicata as enshrined in Section 11 of CPC, is founded on the maxim "Nemo Debet Bis Vexari Pro Una Et Eadem Causa". In a recent decision in the case of *Nagabhushanammal Vs. C. Chandikeswaralingam*<sup>8</sup>, this Court observed thus:

“15. ‘Res judicata’ literally means a ‘thing adjudicated’ or ‘an issue that has been definitively settled by judicial decision’. The principle operates as a bar to try the same issue once over. It aims to prevent multiplicity of proceedings and accords finality to an issue, which directly and substantially had arisen in the former suit between the same parties or their privies and was decided and has become final, so that the parties are not vexed twice over; vexatious litigation is put an end to and valuable time of the court is saved,. (See *Sulochana Amma v. Narayanan Nair*<sup>9</sup>.)

16. In *Jaswant Singh v. Custodian of Evacuee Property*<sup>10</sup> this Court has laid down a test for determining whether a subsequent suit is barred by res judicata: (SCC p. 657, para 14)

‘14. ... In order that a defence of res judicata may succeed it is necessary to show that not only the cause of action was the same but also that the plaintiff had an opportunity of getting the relief which he is now seeking in the former proceedings. The test is whether the claim in the subsequent suit or proceedings is in fact founded upon the same cause of action which was the foundation of the former suit or proceedings. ’

17. The expression ‘cause of action’ came to be interpreted by this Court in *Kunjan Nair Sivaraman Nair v. Narayanan Nair*<sup>11</sup> at para 16. To quote: (SCC p. 286)

‘16. The expression ‘cause of action’ has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in ‘cause of action’.

18. In *Halsbury’s Laws of England (4th Edn.)*<sup>12</sup>, the expression has been defined as follows:

‘Cause of action’ has been defined as meaning simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. ‘Cause of action’ has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action. ”

29. The principle of res judicata applies on all fours to the present case as has been rightly held by the Trial Court and affirmed by the High Court in the impugned judgment, in particular, in paragraphs 31 and 32 thereof, which have been reproduced in paragraph 19 above.

30. We, accordingly, affirm the judgment and orders under appeal and dismiss these appeals being devoid of merit.

31. Accordingly, these appeals are dismissed with costs.

Judgment Referred.

<sup>1</sup>(1982) 1 KLJ 0137

<sup>2</sup>AIR 1999 SC 3750

<sup>3</sup>AIR 1980 Ker 0236

<sup>4</sup>(2000) AIR SCW 2432

<sup>5</sup>AIR 1986 SC 0391

<sup>6</sup>AIR 1998 SC 2046

<sup>7</sup>AIR 1965 SC 1153

<sup>8</sup>(2016) 4 SCC 0434

<sup>9</sup>Black’s Law Dictionary, 8th Edn., 1336-37.

<sup>10</sup>(1994) 2 SCC 0014

<sup>11</sup>(1985) 3 SCC 0648  
<sup>12</sup>(2004) 3 SCC 0277