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SULOCHANA AMMA

v.

NARAYANAN NAIR

SEPTEMBER 24, 1993

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[K. RAMASWAMY AND N.P. SINGH, JJ.]

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*Code of Civil Procedure, 1908: Explanation VIII to Section 11—Introduced by the Amending Act of 1976—Explanation to be read harmoniously with Section 11—Order or issue arising directly and substantially between parties—decided finally by a competent Court or tribunal even of limited jurisdiction including pecuniary jurisdiction—Subsequent proceeding between same parties raising issues decided in the earlier suit—Though that Court of limited jurisdiction or special jurisdiction not competent to try the subsequent suit the earlier proceedings operate as res judicata.*

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*Interpretation of Statutes: Explanation to a Section in a statute—Not a substantive provision by itself - but part and parcel of enactment - to be read harmoniously with Section to clear any ambiguity.*

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By virtue of a settlement deed dated 19.5.1961 one 'K' got life estate in respect of his wife's property and the remainder vested in favour of the respondent. After her death, 'K' alienated the property in 1972. Respondent filed a suit to restrain 'K' from alienating the properties and committing acts of waste. During the pendency of the suit, appellant purchased the suit property.

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The trial Court decreed the suit holding that 'K' had no right to alienate the lands. Permanent injunction was issued restraining him from committing acts of waste. Appeal preferred by 'K' was dismissed. Since the appellant was not made a party in the suit, Respondent filed a fresh suit against 'K' and the appellant for perpetual injunction restraining them from committing acts or waste. The suit was decreed, but the validity of the appellant's title was left open. Respondent filed another suit for declaration of his title and possession against the appellant. The trial Court decreed the suit and granted *mesne* profits. Unable to succeed in the appeal and second appeal, appellant preferred the present appeal.

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On behalf of the appellant, it was contended that S. 11 CPC and

Explanation VIII thereof should be read harmoniously; that the Amending Act of 1976 made no attempt to delete the words "Court competent to try such suit" in the main section, which would indicate that the legislature intended to retain the distinction between judgments of the Court of limited pecuniary jurisdiction which will not operate as *res judicata* to a later suit laid in a court of unlimited jurisdiction, on the same issue between the same parties or persons under whom they claim title or litigating under the same title; that Explanation VIII only brought within the fold of Section 11, the decree or order of the Courts of special jurisdiction, like probate Court, land acquisition Court, rent control Court etc; and that the *non-obstante* clause incorporated in Explanation VIII would only be in relation to such decrees; and that the purpose of the explanation was only to remove that anomaly.

Dismissing the appeal, this Court

HELD: 1.1. A decree in a previous suit will not operate as *res judicata*, unless the Judge by whom it was made, had jurisdiction to try and decide, not that particular suit, but also the subsequent suit itself in which the issue is subsequently raised. This interpretation had consistently been adopted before the introduction of Explanation VIII. So the earlier decree of the court of a limited pecuniary jurisdiction would not operate as *res judicata* when the same issue is directly and substantially in issue in a later suit filed in a court of unlimited jurisdiction. It had, therefore, become necessary to bring in the statute Explanation VIII. To cull out its scope and ambit, it must be read along with Section 11, to find the purpose it seeks to serve. The Law Commission in its report recommended to remove the anomaly and bring within its fold the conclusiveness of an issue in a former suit decided by any court, be it either of limited pecuniary jurisdiction or of special jurisdiction, like insolvency court, probate court, land acquisition court, Rent Controller, Revenue Tribunal, etc. No doubt the main body of Section 11 was not amended, yet the expression "the court of limited jurisdiction" in Explanation VIII is wide enough to include a court whose jurisdiction is subject to pecuniary limitation and other cognate expression analogous thereto. Therefore, Section 11 is to be read in combination and harmony with Explanation VIII. The result that would flow is that an order or an issue which had arisen directly and substantially between the parties or their privies and decided finally by a competent court or tribunal, though of limited or special jurisdiction, which includes pecuniary jurisdiction, will

A operate as *res judicata* in a subsequent suit or proceeding, notwithstanding the fact that such court of limited or special jurisdiction was not competent court to try the subsequent suit. The issue must directly and substantially arise in a later suit between the same parties or their privies. This question is no longer *res integra*. [525-D-H; 526-A, B]

B 1.2. The decree of the District Munsif, though of limited pecuniary jurisdiction, would operate as *res judicata* in the subsequent suit between the same parties. [526-G]

C *Rai Bajrang Bahadur Singh v. Rai Beni Madho Rakesh Singh & Anr.*, A.I.R. (1938) P.C. 210 at 214; *Daryao v. State of U.P.*, [1962] 1 SCR 574 and *Gulam Abbas v. State of U.P.*, [1982] 1 SCC 71 relied on.

*P.M. Kavade v. A.B. Bokil*, AIR (1971) SC 2228, referred to.

D 2. It is obvious from the objects underlying Explanation VIII, that by operation of the *non obstante* clause finality is attached to a decree of civil court of limited pecuniary jurisdiction also to put an end to the vexatious litigation and to accord conclusiveness to the issue tried by a competent court, when the same issue is directly and substantially in issue in a later suit between the same parties or their privies by operation of Section 11. The parties are precluded to raise once over the same issue for trial. [527-D, E]

E *P.V.N. Devoki Amma v. P.V.N. Kunhi Raman*, A.I. R. (1980) Kerala 230; *Kumarmonisa v. Himachal Sahu*, AIR (1981) Orissa 177 and *C. Arumugathan v. S.Muthusamy Naidu*, (1991) Law Weekly 63 Madras, approved.

F *Nabin Majhi v. Tele Majhi*, AIR (1978) Calcutta 440 and *Pramode Ranjan Banerjee v. Nirpada Mkondel*, AIR (1980) Calcutta 181, overruled.

G 3. It is settled law that explanation to a section is not a substantive provision by itself. It is entitled to explain the meaning of the words contained in the section or clarify certain ambiguities or clear them up. It becomes a part and parcel of the enactment. Its meaning must depend upon its terms. Sometimes, it would be added to include something within it or to exclude from the ambit of the main provision or condition or some words occurring in it. Therefore, the explanation normally should be so read as to harmonise with and to clear up any ambiguity in the same section. [527-F]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5152 of 1993. A

From the Judgment and Order dated 23.11.1992 of the Kerala High Court in S.A. No. 802 of 1990-D.

S. Sukumaran and N. Sudhakarn for the Appellant. B

G. Viswanatha Iyer, P.K. Pillai and Dileep Pillai for the Respondent.

The Judgment of the Court was delivered by

K. RAMASWAMY, J. Leave granted. C

The conflict of judicial opinion among the High Courts in interpretation of Explanation VIII to Section 11 of the Code of Civil Procedure, as introduced by the Code of Civil Procedure (Amendment) Act, 1976, is to be resolved in this appeal. Kutty Amma executed Udambadi (settlement deed ) on May 19, 1961 giving life-estate to her husband Krishnan Nair, for short 'K', and vested remainder in favour of the respondent. She died in the year 1971. 'K' alienated the property in 1972 by a registered sale deed in favour of Narayanan Nair and Chennan. The respondent filed O.S. No. 131 of 1972 in the District Munsif Court to restrain 'K' from alienating the properties and committing acts of waste. Pending the suit, the appellant purchased the suit property on April 7, 1975 under Ex. B-1 from Narayanan Nair and Chennan. The trial court, by its judgment and decree, Ex. A-2 dated November 18, 1975 decreed the suit holding that 'K' had no right to alienate the lands and permanent injunction was issued restraining him from committing acts of waste. The appeal in A.S. No. 31 of 1976 by 'K' was dismissed under Ex. A-4 on June 9, 1978. The appellant, being not a party to the earlier suit, when he was committing acts of waste the respondent filed O.S. No.237 of 1975 against 'K' and the appellant for perpetual injunction restraining them from committing the acts of waste. The suit was decreed under Ex. A-5, on October 22, 1981. Therein the validity of the appellant's title was left open. The respondent filed O.S. No. 61 of 1982 in the Court of Subordinate Judge for declaration of his title and possession against the appellant. The trial court by judgment and decree dated October 14, 1986, decreed the suit and granted mesne profits. On appeal, it was confirmed. The second appeal was dismissed. Thus this appeal by special leave. D E F G H

A The concurrent findings recorded by all the courts are that the appellant being successor in title and interest of 'K' is bound by the decrees under Exs. A-2 to A-5 and did not acquire any title under Ex. B-1. The transfer in his favour was only the life-estate 'K' and on his demise the estate of Kutty Amma stands vested in the respondent. Thus the present dispute is concluded by those judgments and decrees by the principle of *res judicata*.

C The valiant effort of Sri Sukumaran, the learned senior counsel, in his effective persuasion and meticulous preparation, is that Section 11 and Explanation VIII should be read harmoniously. The Amending Act of 1976 made no attempt to delete the words " Court competent to try such" suit in the main section, which would indicate that the legislature intended to retain the distinction between judgments of the court of limited pecuniary jurisdiction, which will not operate as *res judicata* to a later suit laid in a court of unlimited jurisdiction, on the same issue between the same parties or persons under whom they claim title or litigating under the same title.

D Explanation VIII only brings within the fold of Section 11, the decree or order of the courts of special jurisdiction, like probate court, land acquisition court, rent control court, etc. The *non obstante* clause incorporated in Explanation VIII would be only in relation to such decrees. The purpose of the explanation, therefore, is only to remove that anomaly. The legislature having been aware of the law laid down by courts, that the decree of a court of limited pecuniary jurisdiction does not operate as *res judicata* in a subsequent suit, did not intend to alter the law by suitable amendment to the body of Section 11. It was urged that the view of the Calcutta High Court in *Nabin Majhi v. Tele Majhi*, AIR (1978) Calcutta 440 and *Pramode Ranjan Banerjee v. Nirapada Mkondel*, AIR (1980) Calcutta 181, is correct interpretation and the contra views of the Kerala High Court in *P.V.N. Devoki Amma v. P.V.N. Kunhi Raman*, AIR (1980) Kerala 230, Orissa High Court in *Kumarmoni Sa v. Himachal Sahu*, AIR (1981) Orissa 177 and *C. Arumugathan v. S. Muthusamy Naidu*, 1991 Law Weekly 63 Madras, are not correct.

G Section 11 of C.P.C. embodies the rule of conclusiveness as evidence or bars as a plea as issue tried in an earlier suit founded on a plaint in which the matter is directly and substantially in issue and became final. In a later suit between the same parties or their privies in a competent court to try such subsequent suit in which the issue has been directly and

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substantially raised and decided in the judgment and decree in the former suit would operate as *res judicata*. Section 11 does not create any right or interest in the property, but merely operates as a bar to try the same issue once over. In other words, it aims to prevent multiplicity of the proceedings and accords finality to an issue, which directly and substantially had arisen in the former suit between the same parties or their privies, decided and become final, so that parties are not vexed twice over; vexatious litigation would be put to an end and the valuable time of the court is saved. It is based on public policy, as well as private justice. They would apply therefore, to all judicial proceedings whether civil or otherwise. It equally applies to quasi-judicial proceedings of the tribunals other than the civil courts.

The words "competent to try such subsequent suit" have been interpreted that it must refer to the pecuniary jurisdiction of the earlier court to try the subsequent suit at the time when the first suit was brought. Mere competency to try the issue raised in the subsequent suit is not enough. A decree in a previous suit will not operate as *res judicata*, unless the judge by whom it was made, had jurisdiction to try and decide, not that particular suit, but also the subsequent suit itself in which the issue is subsequently raised. This interpretation had consistently been adopted before the introduction of Explanation VIII. So the earlier decree of the Court of a limited pecuniary jurisdiction would not operate as *res judicata* when the same issue is directly and substantially in issue in a later suit filed in a court of unlimited jurisdiction, vide *P.M. Kayade v. A.B. Bokil*, AIR (1971) SC 2228. It had, therefore become necessary to bring in the statute Explanation VIII. To cull out its scope and ambit, it must be read along with Section 11, to find the purpose it seeks to serve. The Law Commission in its report recommended to remove the anomaly and bring within its fold the conclusiveness of an issue in a former suit decided by any court, be it either of limited pecuniary jurisdiction or of special jurisdiction, like insolvency court, probate court, land acquisition court, Rent Controller, Revenue Tribunal, etc. No doubt main body of Section 11 was not amended, yet the expression "the court of limited jurisdiction" in Explanation VIII is made enough to include a court whose jurisdiction is subject to pecuniary limitation and other cognate expressions analogous thereto. Therefore, Section 11 is to be read in combination and in harmony with Explanation VIII. The result that would flow is that an order or an issue which had arisen directly and substantially between the parties or their privies an decided finally be

- A a competent court or tribunal, though of limited or special jurisdiction, which includes pecuniary jurisdiction, will operate as *res judicata* in a subsequent suit or proceeding, notwithstanding the fact that such court of limited or special jurisdiction was not a competent court to try the subsequent suit. The issue must directly and substantially arise in a later suit between the same parties or their privies. This question is no longer *res integra*. In *Rai Bajrang Bahadur Singh v. Rai Beni Madho Rakesh Singh & Anr.*, AIR (1938) P.C. 210 at 214, the facts were that under U.P. Land Revenue Act 3 of 1901, the consolidation and partition of the lands were effected and became final. Thereafter, one of the land-owners claimed title in a civil suit for a declaration that he was the superior land-holder. In view of Section 233 (K) of the Land Revenue Act, on a divergence of opinion among Oudh Chief Court and Allahabad High Court, the judicial committee held at p.214 that if a question of title affecting the partition, which might have been raised in the partition proceedings, was not raised and the partition was completed, Section 233(K) debar parties to the partition from raising the question of title subsequently in a civil court. The revenue court is a court of special jurisdiction, In *Daryao v. State of U.P.*, [1962] 1 SCR 574, this Court held at p.582 that the doctrine of *res judicata* is in the interest of public at large and a finality should be attached to the binding decision pronounced by courts of competent jurisdiction, and it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. In *Gulam Abbas v. State of U.P.*, [1982] 1 SCC 71 at 90, this Court held that the principle of *res judicata* though technical in nature, is founded on considerations of public policy. The technical aspect, for instance, pecuniary or subject-wise competence of the earlier forum to adjudicate the subject matter or to grant reliefs sought in the subsequent litigation, should be immaterial when the general doctrine of *res judicata* is to be invoked. Explanation VIII, inserted by the Amending Act of 1976, was intended to serve this purpose and to clarify this position. It, therefore has to be held that the decree of the District Munsif, though of limited pecuniary jurisdiction, would operate as *res judicata* in the subsequent suit between the same parties.
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The Calcutta High Court took a very narrow view limiting the scope of Explanation VIII to the decisions of the courts of special jurisdiction like probate, insolvency, land acquisition, courts, Rent Controller, Land Revenue Tribunal etc. The Kerala, Orissa Madras High Courts have taken broader view, which view now stands approved by this Court in the afores-

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tated decision. Take an instance, if the scope of Explanation VIII is confined to the order and decree of an insolvency court, the scope of enlarging Explanation VIII would be defeated and the decree of civil courts of limited pecuniary jurisdiction shall stand excluded, while that of the former would be attracted. Such an anomalous situation must be avoided. The tribunal whose decisions were not operating as *res judicata*, would be brought within the ambit of Section 11, while the decree of the Civil Court of limited pecuniary jurisdiction which is accustomed to the doctrine of *res judicata*, shall stand excluded from its operation. Take for instance, now the decree of a Rent Controller shall operate as *res judicata*, but a decree of a District Munsif (Civil Judge) Junior Division, according to the stand of the appellant, will not operate as *res judicata*, though the same officer might have decided both the cases. To keep the litigation unending, successive suits could be filed in the first instance in the court of limited pecuniary jurisdiction and late in a court of higher jurisdiction, and the same issue shall be subject of trial again, leading to conflict of decisions. It is obvious from the objects underlying Explanation VIII, that by operation of the *non obstante* clause finality is attached to a decree of civil court of limited pecuniary jurisdiction also to put an end to the vexatious litigation and to accord conclusiveness to the issue tried by a competent court, when the same issue is directly and substantially in issue in a later suit between the same parties or their privies by operation of Section 11. The parties are precluded to raise once over the same issue for trial.

It is settled law that explanation to a section is not a substantive provision by itself. It is entitled to explain the meaning of the words contained in the section or clarify certain ambiguities of clear them up. It becomes a part and parcel of the enactment. Its meaning must depend upon its terms. Sometime, it would be added to include something within it or to exclude from the ambit of the main provision of some condition or words occurring in it. Therefore, the explanation normally should be so read as to harmonise with and to clear up any ambiguity in the same section.

Sri Sukumaran further contended that the remedy of injunction is an equitable relief and in equity, the doctrine of *res judicata* cannot be extended to a decree of a court of limited pecuniary jurisdiction. We find no force in the contention. It is settled law in a suit for injunction when title is in issue for the purpose of granting injunction, the issue directly and



- A substantially arises in that suit between the parties. When the same issue is put in issue in a late suit based on title between the same parties or their privies in a subsequent suit the decree in the injunction suit equally operates as *res judicata*. In this case, when the right and interest of the
- B respondent were questioned in his suit against 'K', the validity of the settlement deed and the terms thereof were gone into. The civil court found that 'K' acquired life-estate under the settlement deed executed by his wife conferring vested remainder in the respondent and on its basis the respondent was declared entitled to an injunction against 'K' who was prohibited
- C not only from committing acts of waste, but also from alienating the properties in favour of third parties. The later suit of injunction to which the appellant was a party also binds the appellant. Therefore, even the decree founded on equitable relief in which the issue was directly and
- D substantially in issue and decided, and attained finality, would operate as *res judicata* in a subsequent suit based on title where the same issue directly and substantially arises between the parties. The appellant is deriving title from 'K' who was a party in the former suit is also hit by the doctrine of
- E *lis pendens* under Section 52 of the Transfer of Property Act.

Accordingly, we hold that the view of the Calcutta High Court is not good law and contra view is upheld. The judgments and decrees under Exs. A-2 to A-5 operate as *res judicata* against the appellant, who derives his

F title from 'K'. The appeal is accordingly dismissed. The parties are directed to bear their own costs in this appeal.

G.N.

Appeal dismissed.