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**IN THE SUPREME COURT OF INDIA**
CIVIL APPELLATE JURISDICTION
***DIPANKAR DATTA; J., AUGUSTINE GEORGE MASIH; J.***
CIVIL APPEAL NO. 2609 OF 2013; March 25, 2026
**SHARADA SANGHI & ORS.** *versus* **ASHA AGARWAL & ORS.**

**Code of Civil Procedure, 1908 – Order XXI Rules 97-101 – Execution of Decree – Obstruction by Third Party – Abuse of Process – Re-litigation – *Res Judicata* – Appellants obtained a decree for specific performance and initiated execution - Respondents 1-3 (third parties) filed objections under Order XXI Rules 99-101 claiming independent title - During the pendency of the specific performance suit, the appellants had also filed separate suits against the same respondents for injunction/possession but allowed those suits to be dismissed for default and failed to restore them - Held: The appellants, having abandoned their earlier independent suits against the respondents for the same subject matter without seeking liberty to file afresh, are precluded from contesting the respondents' rights in execution proceedings - To permit the appellants to reap the benefits of the decree against these respondents through execution, after having failed to pursue direct legal remedies against them, would amount to an abuse of the process of the court and "re-litigation" - The principle of *nemo debet bis vexari* (no one should be twice troubled for the same cause) applies.** *[Paras 32-54]*

*For Appellant(s): Mr. Huzefa Ahmadi, Sr. Adv. Mrs. B. Sunita Rao, AOR Mr. Anurag, Adv. Mr. Arvind Agarwal, Adv. Mr. Divyansh Kumar, Adv. Mr. Rohan Sharma, Adv.*

*For Respondent(s): Mr. Harin P Raval, Sr. Adv. Mr. R Anand Padmanabhan, Sr. Adv. Ms. Urmi H Raval, Adv. Ms. Shreya Bansal, Adv. Ms. Shrestha Narayan, Adv. Mr. Siddharth H Raval, Adv. Mr. Arimardhan Sharma, Adv. Ms. Nidhi Sharma, AOR Mr. Shashi Bhushan Kumar, AOR*

## J U D G M E N T

**DIPANKAR DATTA, J.**

## THE APPEAL

**1.** This civil appeal, by special leave granted on 14th March, 2013, assails the judgment and decree dated 21st October, 2010[1] passed by the High Court of Andhra Pradesh at Hyderabad[2] of dismissal of a second appeal[3] preferred by the appellants, thereby affirming the judgment and decree of the first appellate court dated 17th January, 2007. Appellants[4] were directed to seek their remedies by way of a separate civil suit.

## FACTUAL BACKGROUND

**2.** Facts giving rise to the present appeal, shorn of unnecessary details, are these.

2.1 Appellants instituted a suit[5] seeking specific performance of an agreement for sale dated 15th December, 1986 in respect of the northern portion of an immovable property

[1] impugned judgment
[2] High Court
[3] Second Appeal No. 620 of 2007
[4] plaintiffs in the original suit
[5] O.S. No. 329 of 1988

bearing Municipal No. 3-6-99[6], situated at Himayat Nagar, Hyderabad before the Senior Civil Judge, City Civil Court, Hyderabad[7].

2.2 The suit property allegedly belonged to Smt. Amatul Wahab Jaffernnisa Begum, who died on 25th January, 1983. Upon her demise, her only son, Abdul Mujeeb Mahmood, succeeded to the property. While in possession thereof, he entered into the agreement[8] for sale with the appellants for a consideration of Rs. 4,25,000/- in respect of a portion admeasuring approximately 685 square yards.

2.3 Trigger for the suit for specific performance and possession[9] was the alleged failure on the part of Abdul Mujeeb Mahmood - the defendant - to perform his obligations under the said agreement.

2.4 By judgment and decree dated 28th October, 1998, the Trial Court decreed the specific performance suit, directing the appellants to deposit the balance consideration and further directing execution of the sale deed through court in the event of default by the defendant. The decree attained finality.

2.5 Appellants thereafter initiated Execution Petition No. 37 of 1999 before the executing court. A sale deed was executed through court on 25th January, 2001, and warrants for delivery of possession were issued. Delivery of possession commenced through the process of court.

2.6 At that stage, the respondents 1 to 3 (who were not parties to the specific performance suit) filed an application[10] under Order XXI Rules 99 to 101, Code of Civil Procedure, 1908[11] asserting independent title and possession over portions of the same property on the basis of sale deeds dated 5th July, 1990 and 20th July, 1990, purportedly executed by one Mir Sadat Ali acting through a General Power of Attorney[12] holder. It was claimed that Mir Sadat Ali had derived title pursuant to an alleged oral gift made in his favour by the original owner, Smt. Amatul Wahab Jaffernnisa Begum. It was vigorously claimed that the appellants had instituted two suits[13] seeking cancellation of the said sale deeds; however, the said suits came to be dismissed for default on 18th October, 1996 and 27th October, 1998 respectively. Not only that, proceedings initiated thereafter for restoration of the two suits also met the same fate. Since the appellants accepted the orders of dismissal, the issue as to legality and validity of the sale deeds by which the respondents 1 to 3 claimed to have acquired title attained finality.

2.7 The said respondents also asserted that they were *bona fide* purchasers for value; that the decree passed in the specific performance suit was not binding upon them as neither their vendors nor they were parties to such suit; and that the execution proceedings were vitiated by fraud. They sought protection of possession and consequential reliefs.

2.8 The objection petition was contested by the appellants. The executing court conducted a detailed enquiry, permitting the parties to adduce oral and documentary evidence. Issues relating to title, possession, authority of the alleged vendor, validity of documents and prior litigation were examined.

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[6] suit property
[7] Trial Court
[8] said agreement
[9] specific performance suit
[10] objection petition
[11] CPC
[12] GPA
[13] O.S. Nos. 892 and 893 of 1990

2.9 By an order dated 30th January, 2006, the executing court dismissed the objection petition, recording findings that the said respondents had failed to establish any valid or independent title; that the alleged power of attorney and oral gift were not proved; that municipal and revenue records supported the appellants' case; and that the respondents 1 to 3 were not entitled to resist execution of the decree.

2.10 Aggrieved by dismissal of their objection petition, the respondents 1 to 3 preferred an appeal[14] before the Additional Chief Judge, City Civil Court, Hyderabad[15]. *Vide* judgment and decree dated 17th January 2007, the Appellate Court allowed the appeal and set aside the order of the Executing Court. The Appellate Court held that since the respondents were not parties to the specific performance suit and claimed independent title, the decree passed therein was not operative against them, and that the appellants were required to institute a separate suit to establish their rights as against the respondents.

2.11 Appellants carried the decree in the above-referred second appeal before the High Court, raising substantial questions of law relating to the scope and effect of adjudication under Order XXI Rules 99 to 101, CPC.

## JUDGMENT OF THE APPELLATE COURT

**3.** The Appellate Court framed the following points for consideration:

i. Whether the petitioners have right and title to the petition schedule property and have right to resist the execution proceedings taken out by the respondents 1 to 3 in view of the dismissal of OS No 892 of 1990 and OS No 893 of 1990?

ii. Whether the petitioners are bound by the Decree in favour of the respondents 1 to 3 in the OS No 329 of 1988, in which the execution proceedings are taken up?

iii. To what relief?

**4.** It is not necessary to delineate here what the detailed findings were, which the Appellate Court returned. Suffice it is for the present case to note the answers to the aforesaid questions.

**5.** While answering the first point, the Appellate Court proceeded to hold that dismissal of O.S. Nos. 892 and 893 of 1990 for default and the subsequent applications seeking restoration of the said two suits also having been dismissed for default, such dismissal had become final and *"it operates as resjudicata under Sec 11 CPC against the respondents"*.

**6.** We also find the following passage from the Appellate Court's judgment:

"Res judicata pro veritate accipitur" is the full maxim which has, over the years, shrunk to mere "res judicata". Section 11 CPC contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence "interest reipublicae ut sit finis litium" (it concerns the State that there be an end to law suits) and partly on the maxim "nemo debit bis bis vexari pro una et eadem cause" (no man should be vexed twice over for the same cause). The section does not affect the jurisdiction of the court but operates as a bar to the trial of the suit or issue, if the matter in the suit was directly and substantially in issue (and finally decided) in the previous suit between the same parties litigating under the same title in a court, competent to try the subsequent suit in which such issue has been raised.

[14] C.M.A. No. 15 of 2006
[15] Appellate Court

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In the present case, the respondents did not claim all the reliefs that are essential for affective (*sic*, effective) adjudication of their claim in OS No 329 of 1988 and hence, cannot be permitted to raise the same plea now.

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The respondents having allowed the suits to be dismissed for default and having allowed te (*sic,* the) dismissal to become final, tries to get the same relief by executing the decree against the petitioners, though themselves or their purchasers are parties to the said decree. …

**7.** On the second point, the Appellate Court held that:

In view of my findings in Point No 1, the petitioners are not bound by the decree in OS No 329 of 1988. The respondents have to necessary file a fresh suit against the petitioners, seeking their relief. The Trial Court has erred in appreciating the material on record and arrived at an erroneous conclusion. The order and Decree of the Trial Court are liable to be set aside.

## IMPUGNED JUDGMENT

**8.** The impugned judgment is short and cryptic, which could have led to grant of leave. It dismissed the second appeal at the admission stage holding that no substantial question of law arose for consideration. The High Court affirmed the view of the Appellate Court that the decree in the specific performance suit was not binding on the respondents 1 to 3 and that the appellants must seek their remedies by way of a separate suit.

## SUBMISSIONS OF THE APPELLANTS

**9.** Mr. Huzefa Ahmadi, learned senior counsel appearing for the appellants, contended that both the Appellate Court as well as the High Court fell into manifest error in interfering with the well-reasoned order of the Executing Court.

**10.** Developing his submissions, Mr. Ahmadi urged that the sale deeds dated 5th July, 1990 and 20th July, 1990, purportedly executed in favour of the respondents 1 to 3, were clearly hit by the doctrine of *lis pendens* embodied in Section 52 of the Transfer of property Act, 1882 since the specific performance suit was pending on the date of such transfers. According to him, any alienation made during the pendency of the suit could not defeat the rights flowing from the eventual decree.

**11.** Mr. Ahmadi next submitted that the courts below committed a serious jurisdictional error in allowing the application preferred by the respondents 1 to 3 under Order XXI Rule 101 of the CPC and, yet, directing the appellants to institute a separate suit. Such a direction, it was argued, runs contrary to the express scheme of Order XXI Rules 97 to 101, CPC which confers ample power upon the executing court to adjudicate all questions relating to right, title or interest in the property arising between the parties, or even "any person" resisting delivery of possession, whether or not bound by the decree. Reliance was placed on the decision of this Court in ***Shreenath v. Rajesh***[16], to buttress the proposition that a party ought not to be driven to a separate suit once such adjudicatory power is available in execution. Paragraphs 11 and 13, to which our attention was drawn, reads thus:

[16] (1998) 4 SCC 543

**11.** So, under Order 21 Rule 101 all disputes between the decree-holder and any such person is to be adjudicated by the executing court. A party is not thrown out to relegate itself to the long-drawn-out arduous procedure of a fresh suit. This is to salvage the possible hardship both to the decree-holder and the other person claiming title on their own right to get it adjudicated in the very execution proceedings. We find that Order 21 Rule 35 deals with cases of delivery of possession of an immovable property to the decree-holder by delivery of actual physical possession and by removing any person in possession who is bound by a decree, while under Order 21 Rule 36 only symbolic possession is given where the tenant is in actual possession. Order 21 Rule 97, as aforesaid, conceives of cases where delivery of possession to the decree-holder or purchaser is resisted by any person. "Any person", as aforesaid, is wide enough to include even a person not bound by a decree or claiming right in the property on his own including that of a tenant including a stranger.

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**13.** So far sub-clause (1) of Rule 97 the provision is the same but after the 1976 Amendment all disputes relating to the property made under Rules 97 and 99 are to be adjudicated under Rule 101, while under unamended provision under subclause (2) of Rule 97, the executing court issues summons to any such person obstructing possession over the decretal property. After investigation under Rule 98 the court puts back a decree-holder in possession where the court finds obstruction was occasioned without any just cause, while under Rule 99 where obstruction was by a person claiming in good faith to be in possession of the property on his own right, the court has to dismiss the decree-holder's application. Thus even prior to 1976, right of any person claiming right on his own or as a tenant, not party to the suit, such person's right has to be adjudicated under Rule 99 and he need not fall back to file a separate suit. By this, he is saved from a long litigation. So a tenant or any person claiming a right in the property on the own, if resists delivery of possession to the decree-holder, the dispute and his claim has to be decided after the 1976 Amendment under Rule 97 read with Rule 101 and prior to the amendment under Rule 97 read with Rule 99. However, under the old law, in case order is passed against the person resisting possession under Rule 97 read with Rule 99 then by virtue of Rule 103, as it then was, he was to file a suit to establish his right. But now after the amendment one need not file suit even in such cases as all disputes are to be settled by the executing court itself finally under Rule 101.

**12.** Inviting our notice to the findings recorded by the Executing Court, Mr. Ahmadi submitted that the respondents 1 to 3 had failed to establish any semblance of right, title or interest in the suit property. He emphasized that their claim rested upon the sale deeds executed by a GPA holder of one Mir Sadat Ali. The latter, in turn, claimed title on the strength of an alleged oral gift. He argued that such oral gift was a mere afterthought which was neither registered, nor proved through cogent evidence, nor supported by examination of any attesting witness. Significantly, in O.S. No. 671 of 1991, a competent court had declared that no such oral gift had been made in favour of Mir Sadat Ali. That decree having attained finality, Mir Sadat Ali could not have conveyed any valid title, nor could he have authorised execution of sale deeds through a GPA. The original sale deeds and the power of attorney were, in any event, not produced before the court.

**13.** Elaborating further, Mr. Ahmadi submitted that under Mohammedan law, a valid gift requires (i) a clear declaration by the donor, (ii) acceptance by the donee, and (iii) delivery of possession. In the present case, none of these essential ingredients stood satisfied.

The original owner admittedly continued in possession; hence, the very basis of the respondents' claim was legally untenable.

**14.** It was further submitted that dismissal of O.S. Nos. 892 and 893 of 1990 for default could not operate as *res judicata*, the suits having not been adjudicated on merits. In any event, no plea of *res judicata* had been raised by the respondents in accordance with law.

**15.** Lastly, it was urged that in a suit for specific performance, only the parties to the contract are necessary parties. The High Court, according to Mr. Ahmadi, erred in proceeding on the premise that since the respondents or their alleged vendors were not parties to the specific performance suit, the decree therein would not bind them. Such reasoning, he submitted, overlooks both the doctrine of *lis pendens* and the settled principle that a transferee *pendente lite* is bound by the decree passed in the suit.

**16.** Resting on the aforesaid submissions, Mr. Ahmadi prayed that upon setting aside of the judgments of the Appellate Court and the High Court, the executing court's judgment be restored.

## SUBMISSIONS OF THE RESPONDENTS

**17.** Mr. Raval, learned senior counsel, appearing on behalf of the respondents 1 to 3, advanced elaborate submissions in support of the impugned judgment.

**18.** Mr. Raval submitted that the respondents have been in settled possession of the suit property since 1990 by virtue of registered sale deeds. The validity of these sale deeds had already been put in issue by the appellants in earlier proceedings and the challenge thereto did not succeed. Appellants having allowed those proceedings to lapse and attain finality, cannot now be permitted to reopen the same issues in the guise of execution proceedings. His submissions, in substance, are as follows:

18.1 The contention of the appellants that the sale of the property in favour of the respondents is hit by the doctrine of *lis pendens* is misconceived. The doctrine operates only against the parties to the suit and those claiming under them. Neither the respondents nor their vendors were parties to the proceedings in O.S. No. 329 of 1988, nor do they claim through any of the defendants therein. In such circumstances, the doctrine has no application and cannot be invoked to invalidate the respondents' purchase.

18.2 Reliance placed by the appellants on Order XXI Rule 102, CPC is equally misplaced. The provision contemplates a situation where a judgment debtor transfers the property after the institution of the suit to a person who thereafter obstructs execution. In the present case, the respondents did not derive title from the judgment debtor. Their title flows from independent registered sale deeds. The foundational requirement for invoking the rule is, therefore, absent.

18.3 Appellants themselves had instituted two independent suits, O.S. No. 892 of 1990 and O.S. No. 893 of 1990, seeking to challenge and set aside the very sale deeds under which the respondents claim title. Both suits, however, were dismissed for default, and even the applications filed for their restoration were dismissed. In view of Order IX Rule 9, CPC, the appellants are barred from instituting a fresh proceeding on the same cause of action. Having failed to pursue the remedies they themselves invoked, the appellants must be taken to have abandoned the challenge to the sale deeds and cannot now attempt to question their validity indirectly in execution.

18.4 Having regard to the above, the principles of res judicata, constructive res judicata and issue estoppel are clearly attracted. Appellants consciously chose their remedy, initiated proceedings and then allowed them to be dismissed. The law does not permit a

litigant to reopen issues which have already been concluded or which ought to have been pursued in earlier proceedings.

**19.** Mr. Raval further contended that the present execution proceedings themselves are misconceived. The execution petition has been filed on the strength of the decree passed in O.S. No. 329 of 1988. However, the decree does not contain any operative direction for delivery of possession. In the absence of such a decree, a proceeding seeking possession through execution is unsustainable.

**20.** It was also urged that the appellants have not approached the Court with clean hands. While prosecuting O.S. No. 329 of 1988, they failed to disclose the existence of the registered sale deeds executed in favour of the respondents, though they were fully aware of them. More significantly, even after instituting O.S. No. 892 of 1990 and O.S. No. 893 of 1990 seeking cancellation of those very sale deeds, the appellants did not inform the trial court in the earlier suit about the pendency of these proceedings. This, according to the respondents, amounts to suppression of material facts.

**21.** Lastly, it was submitted that the appellants have also placed reliance upon a decree passed in O.S. No. 679 of 1991. However, that decree was passed against a person who had already died before the judgment was pronounced. A decree against a dead person is a nullity in the eye of law and has no legal effect. Such invalidity can be raised at any stage, including in collateral or execution proceedings. Reliance placed by the appellants on such a decree is, therefore, wholly untenable.

**22.** It was, accordingly, prayed that the appeal be dismissed.

## ISSUES INVOLVED

**23.** Having noted the factual canvas and the arguments advanced on behalf of the parties, the following issues fall for determination:

A. Whether the Appellate Court was right in returning the finding that the claim of the appellants was hit by *res judicata* and the High Court was right in affirming such finding?

B. Whether the conduct of the appellants is such that the same would disentitle them to any relief?

## ANALYSIS

**24.** Our answers to the issues ought to be prefaced by a brief reference to certain relevant facts once again.

**25.** In the present case, it is not in dispute that while the specific performance suit was pending adjudication, the appellants instituted O.S. Nos. 892 and 893 of 1990 seeking cancellation of the sale deeds in favour of the respondents 1 to 3 and their vendors in respect of the very same subject property. In those suits, it was specifically averred in paragraph 4 that the appellants had entered into the said agreement and had already instituted the specific performance suit, which was pending consideration. It was further pleaded that they were forcibly dispossessed by the respondents 1 to 3 and their vendor on 07$^{th}$ July, 1990, and that the sale deeds dated 05$^{th}$ July, 1990 and 20$^{th}$ July, 1990 were concocted documents. What the appellants themselves asserted was that effective relief in the specific performance suit could not be granted unless the defendants' title was negatived and possession restored.

**26.** At the cost of repetition, the subsequent course of proceedings in O.S. Nos. 892 and 893 of 1990 is also necessary to be taken note of. Both suits ultimately came to be dismissed for default.

**27.** The record reveals that O.S. No. 892 of 1990 was transferred to another court and notice of such transfer had been duly served upon the advocate on record for the appellants. To contest the suit, a written statement was filed by the defendants therein. However, there was non-appearance on behalf of the appellants resulting in the suit being dismissed for default on 18th October, 1996.

**28.** As regards O.S. No. 893 of 1990, the record indicates that it was not transferred and continued before the same Court. In that suit as well, a written statement had been filed. Nonetheless, owing to the appellants' non-appearance, it too was dismissed for default on 27th October, 1998. The material fact remains that O.S. No. 893 of 1990, pending before the Trial Court, was dismissed for default on 27th October, 1998 - a day prior to the decree dated 28th October, 1998 being passed in the specific performance suit.

**NOT *RES JUDICATA***

**29.** At the outset, we record our inability to concur with the reasoning of the Appellate Court, which has since been affirmed by the High Court, that dismissal of a suit for default would, by itself, operate as *res judicata* within the meaning of Section 11, CPC to bar adjudication of proceedings initiated by the appellants for execution.

**30.** Section 11 postulates that the matter must have been "heard and finally decided". Dismissal of a suit for default, not being a decision on merits, cannot ordinarily be regarded as a final adjudication so as to attract the strict application of Section 11, CPC.

**31.** Issue-A is thus answered in favour of the appellants.

**CONDUCT OF THE APPELLANTS**

**32.** Though *res judicata* is not applicable here, we find the Appellate Court to have referred to the maxim *nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa*. With this principle in mind coupled with the fact that the relief of specific performance, as it stood prior to the 2018 Amendment of the Specific Relief Act, 1963[17], was discretionary in nature (based on equitable principles and considerations of fairness, good faith, and the conduct of the parties), we move forward to examine whether the case of the appellants falter on application of these principles.

**33.** According to *Black's Law Dictionary*[18], the said maxim means that no one ought to be twice troubled, if it appears to the court that it is for one and the same cause of action. In simple terms, once a dispute relating to a particular cause has been brought before a competent court, the same party cannot be allowed to raise the very same issue again in another proceeding (emphasis ours) or at a later stage. The rule is meant to prevent repeated litigation over the same matter and to ensure finality in judicial decisions. It protects parties from being subjected to multiple proceedings based on the same cause. As we read and understand the maxim, it is different from *res judicata* in the sense that its application in a given situation does not require a decision on merits to be rendered in the earlier round of proceedings before the court.

**34.** In ***S.C.F. Finance Co. Ltd. v. Masri and another (No.3)***[19], the Court of Appeal reiterated that where a litigant, having had the opportunity to establish a case, declines to proceed and submits to dismissal, he may, save in exceptional circumstances, lose the right to agitate the same issue in subsequent proceedings. The principle succinctly stated is that a party who has had the opportunity of proving a fact in support of his claim and

[17] 1963 Act
[18] Seventh Edition
[19] [1987] 2 WLR 81

chooses not to rely on it, cannot thereafter seek to raise it before another tribunal. Elaborating the principle and placing reliance on ***Khan v. Golecha International Ltd***[20], it was held thus:

First, for the general principle (*Ord v Ord* [1923] 2 KB 432 at 439, [1923] All ER Rep 206 at 210 per Lush J; I need not narrate the facts): "The words 'res judicata' explain themselves. If the res—the thing actually or directly in dispute—has been already adjudicated upon, of course by a competent Court, it cannot be litigated again. There is a wider principle, to which I will refer in a moment, often as covered by the plea of res judicata, that prevents a litigant from relying on a claim or defence which he had an opportunity of putting before the Court in the earlier proceedings and which he chose not to put forward …" I turn straight to the wider principle ([1923] 2 KB 432 at 443, [1923] All ER Rep 206 at 212): 'The maxim 'Nemo debet bis vexari' prevents a litigant who has had an opportunity of proving a fact in support of his claim or defence and chosen not to rely on it from afterwards putting it before another tribunal. To do that would be unduly to harass his opponent, and if he endeavoured to do so he would be met by the objection that the judgment in the former action precluded him from raising that contention. It is not that it has been already decided, or that the record deals with it. The new fact has not been decided; it has never been in fact submitted to the tribunal and it is not really dealt with by the record. But it is, by reason of the principle I have stated, treated as if it had been'.

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Finally, Brightman LJ dealt with an argument put forward that, while an order by consent at first instance founded on an admission made by one party could lead to res judicata, an order by consent on appeal dismissing the appeal could not on the ground that an appellate court could not properly interfere with the decision of an inferior court without proper judicial consideration. Brightman LJ continued ([1980] 2 All ER 259 at 267, [1980] 1 WLR 1482 at 1491):

"I refer back to what Lush J said in *Ord v Ord* [1923] 2 KB 432 at 443, [1923] All ER Rep 206 at 212: The maxim 'Nemo debet bis vexari' prevents a litigant who has had an opportunity of proving a fact in support of his claim or defence and chosen not to rely on it from afterwards putting it before another tribunal'. In this case [the plaintiff] had his opportunity, in support of his appeal on the previous occasion, of establishing that money was lent. He chose not to establish that position. His counsel got up in court and deliberately abandoned it. So it seems to me that he loses his right of establishing that same position before another tribunal."

**35.** In this context, reliance may also be placed upon ***Barber v. Staffordshire County Council***[21], wherein it was observed that an order dismissing proceedings, even without a detailed consideration on merits, may, in appropriate circumstances give rise to estoppel, if a party having put forward a positive case declines to pursue it and allows the matter to be dismissed. The Court emphasised that such dismissal is not a mere administrative act but a judicial determination capable of attracting estoppel.

**36.** The Latin maxim referred above was recently considered by this Court in ***Amruddin Ansari (Dead) Through Lrs v. Afajal Ali***[22] in the context of Section 11 CPC, emphasizing that an issue once finally decided by a competent court cannot be reopened. While that interpretation was in the strict statutory sense, the peculiar facts of the present case and the conduct of the parties justify a broader application of the maxim to uphold finality and prevent repeated litigation on shifting grounds. Such a purposive approach is consistent with comparative jurisprudence, including ***S.C.F. Finance Co. Ltd.*** (supra) and ***Barber*** (supra).

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[20] [1980] 1 WLR 1482
[21] [1996] 2 All ER 748 (CA)
[22] 2025 SCC OnLine SC 912

**37.** We now proceed to apply the above discussed principles to the present case. It is undisputed that the appellant instituted the specific performance suit in the year 1988, when the field was governed by the unamended provisions of the 1963 Act. Two years later, they instituted the two suits (O.S. Nos. 892 and 893 of 1990) for cancellation of the sale deeds, which were allowed by the appellants to be dismissed for default.

**38.** The dismissal of both suits (O.S. Nos. 892 and 893 of 1990), in such situation, despite the issues raised therein being central to the dispute over title and possession of the subject property, is a material circumstance which cannot be overlooked while assessing the overall conduct of the appellants. These proceedings were not incidental or collateral; they directly concerned the competing claims over the suit property. Though the dismissal was not on merits but on account of non-prosecution, the rival claims remained undetermined because of the appellants themselves.

**39.** Once a suit is dismissed for default owing to the absence of the plaintiff but when the defendant is present, the legal consequences under Order IX Rule 8, CPC come into operation. In such a situation, the remedy available to the plaintiff is circumscribed by Order IX Rule 9 of CPC, which expressly bars the institution of a fresh suit on the same cause of action. The only course open to such a plaintiff is to seek restoration of the earlier suit by demonstrating sufficient cause for his absence on the date of dismissal.

**40.** It is further borne out that even the restoration applications, one of which was filed admittedly after a significant delay of 308 days, ultimately came to be dismissed for default and the orders passed therein have attained finality. In course of the restoration proceedings arising out of O.S. No. 893 of 1990, the appellants had moved an application to bring on record the legal heirs of Mir Sadat Ali; however, no effective steps were taken to pursue the matter to its logical conclusion. The cumulative effect of these events is that the appellants not only permitted the original suits to be dismissed for default but also allowed the restoration proceedings to meet the same fate. Such repeated non-prosecution cannot be simply brushed aside as a lack of initiative to carry proceedings forward; on the contrary, it manifests that the appellants intended to steal a march (over the defendants in such suits) by resorting to dubious methods, deliberately avoiding direct proceedings and instead securing orders through proceedings wherein they were not parties.

**41.** It is clear as daylight that the very institution of the said suits by the appellants demonstrates their awareness of the claim of the respondents 1 to 3 in respect of the suit property. The defence that the respondents 1 to 3 had raised was also within the knowledge of the appellants, since the written statements in the suits had been filed by the former. Having derived clear knowledge of the competing claims, surfacing from the pleadings, the appellants cannot later claim ignorance or treat them as unimportant. It becomes apparent that the appellants were aware of the legal title claimed by the respondents 1 to 3 and despite such knowledge, chose not to implead either them or their vendors as parties in the specific performance suit. This omission, coupled with the failure to properly pursue the earlier suits or seek their restoration after dismissal by pursuing further remedy available in law, is a relevant circumstance while assessing the *bona fides* and overall conduct of the appellants.

**42.** In this backdrop, it becomes important to emphasize that the increasing influx of litigation appears to be driven less by a pursuit of justice and more by an attempt to delay proceedings, harass opponents, and consume valuable judicial time. The judicial process is designed to resolve genuine disputes and not facilitate repetitive or frivolous claims. Parties who initiate or persist in vexatious or frivolous proceedings must remain mindful

that such conduct risks facing judicial disapproval and may warrant appropriate orders, including dismissal with costs, so as to prevent abuse of the process of the court.

**43.** Contextually, it is apposite to refer to ***S.P. Chengalvaraya Naidu v. Jagannath***[23], where this Court touched upon the obligation on the part of a plaintiff to come to court with clean hands and held that a person, who's case is based on falsehood, has no right to approach the court; he can be summarily thrown out at any stage of the litigation.

**44.** This Court in ***Satluj Jal Vidyut Nigam v. Raj Kumar Rajinder Singh***[24] considered a somewhat similar situation in the light of principles of estoppel, acquiescence and waiver. It was observed that a party cannot be permitted to take inconsistent stands in successive proceedings after having abandoned an earlier plea and allowing it to attain finality.

**45.** While a dismissal for default may not constitute *res judicata* in the strict sense under Section 11, CPC, the conduct of the appellants in abandoning the earlier suits, after having raised a positive case therein, attracts the broader principles akin to *nemo debet bis vexari, si constet curiae quod sit pro una et eadem causa*. A litigant who set the ball rolling for decision on an issue later elects not to pursue it cannot be permitted to revive the same dispute at a later stage, particularly in collateral or execution proceedings, and that too by seeking to obtain an order behind the back of the contestants.

**46.** To permit such a course would be to allow an abuse of the judicial process. The maxim *interest republicae ut sit finis litium* reminds us that it is in the public interest that litigation must come to an end. Courts cannot allow parties to reopen or indirectly challenge issues which they have chosen not to pursue earlier.

**47.** Quite apart, it would also not be unfair to criticise the conduct of the appellants as amounting to an abuse of the process of the court. Having allowed their earlier challenge to the sale deeds to attain finality, they cannot now seek to reopen the same issue in execution. Such attempt is impermissible. The process of the court cannot be used to revive what has already been consciously abandoned. This position stands squarely covered by the decision of this Court in ***K.K. Modi v. K.N. Modi***[25], wherein it was authoritatively held that relitigation of an issue already raised, or capable of being raised, constitutes an abuse of process, even if the strict requirements of *res judicata* are not satisfied. This Court held thus:

**43.***The Supreme Court Practice 1995* published by Sweet & Maxwell in paragraphs 18/19/33 (p. 344) explains the phrase "abuse of the process of the court" thus:

"This term connotes that the process of the court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case, summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation. … The categories of conduct rendering a claim frivolous, vexatious or an abuse of process are not closed but depend on all the relevant circumstances. And for this purpose considerations of public policy and the interests of justice may be very material."

**44.** One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose,

[23] (1994) 1 SCC 1
[24] (2019) 14 SCC 449
[25] (1998) 3 SCC 573

or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding.

**45.** In the case of *Greenhalgh* v. *Mallard* [(1947) 2 All ER 255] the Court had to consider different proceedings on the same cause of action for conspiracy, but supported by different averments. The Court held that if the plaintiff has chosen to put his case in one way, he cannot thereafter bring the same transaction before the Court, put his case in another way and say that he is relying on a new cause of action. In such circumstances he can be met with the plea of res judicata or the statement or plaint may be struck out on the ground that the action is frivolous and vexatious and an abuse of the process of the court.

**46.** In *Mcllkenny* v. *Chief Constable of West Midlands Police Force* [(1980) 2 All ER 227] the court of appeal in England struck out the pleading on the ground that the action was an abuse of the process of the court since it raised an issue identical to that which had been finally determined at the plaintiffs' earlier criminal trial. The Court said even when it is not possible to strike out the plaint on the ground of issue estoppel, the action can be struck out as an abuse of the process of the court because it is an abuse for a party to relitigate a question or issue which has already been decided against him even though the other party cannot satisfy the strict rule of res judicata or the requirement of issue estoppel. (emphasis ours)

**48.** In the exercise of equitable jurisdiction, this Court cannot ignore such conduct where a party plays fast and loose with the court. Allowing proceedings touching upon title to be dismissed for default, while continuing to pursue relief in another proceeding concerning the same property, raises concerns as to procedural fairness. Equity frowns upon selective prosecution. A party cannot act recklessly with the judicial process, invoking it as per his convenience and abandoning it when inconvenient, only to resurrect advantage in execution.

**49.** A profitable reference can also be made to Order XXIII Rule 1, CPC where the underlying principle is that when a plaintiff once institutes a suit in a court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject matter again after abandoning the earlier suit or by withdrawing it except with the permission of the court to file a fresh suit. Reliance may be placed on ***Sarguja Transport Service v. State Transport Appellate Tribunal***[26]*,* where this Court explained that such a bar does not arise from Section 11, CPC (since there is no “hearing and final decision”), but from public policy embedded in Order XXIII Rule 1 thereof. The object is to prevent a litigant from repeatedly invoking the court’s jurisdiction on the same cause of action, abandoning the proceeding when it suits him, and then re-agitating the same matter again. This Court therein held as follows:

**7.** The Code as it now stands thus makes a distinction between “abandonment” of a suit and “withdrawal” from a suit with permission to file a fresh suit. It provides that where the plaintiff abandons a suit or withdraws from a suit without the permission, referred to in sub-rule (3) of Rule 1 of Order XXIII of the Code, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. The principle underlying Rule 1 of Order XXIII of the Code is that when a plaintiff once institutes a suit in a court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same

[26] (1987) 1 SCC 5

subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the court to file fresh suit. *Invito beneficium non datur* — the law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will loose it. In order to prevent a litigant from abusing the process of the court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of Rule 1 of Order XXIII. The principle underlying the above rule is founded on public policy, but it is not the same as the rule of res judicata contained in Section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court. The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a court. In the case of abandonment or withdrawal of a suit without the permission of the court to file a fresh suit, there is no prior adjudication of a suit or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of Rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the court.

(emphasis ours)

**50.** It would, thus, be contrary to public policy too, as enunciated in ***Sarguja Transport Service*** (supra), to permit the appellants to reap the benefits of the decree for its execution against the respondents 1 to 3 and have them dispossessed from the property.

**51.** We, therefore, answer issue-B against the appellants.

## CONCLUSION

**52.** In the absence of any exceptional circumstance, the appellants stand precluded to reap the benefit of the decree through execution proceedings having chosen not to pursue O.S. Nos. 892 and 893 of 1990. The same was rightly interdicted and thwarted by the Appellate Court.

**53.** In view of the foregoing discussion, and notwithstanding our reservations with regard to certain aspects of the reasoning assigned by the Appellate Court and the cryptic nature of the impugned judgment of the High Court, we are in agreement with the ultimate conclusion reached by the Appellate Court, which has finally been affirmed by the High Court.

**54.** Having regard to the conduct of the appellants, the finality attached to the earlier proceedings, the settled principles of law discussed above and the utter abuse of the process of court on their part, we are of the considered opinion that no case is made out for interference.

**55.** The impugned judgment is, thus, upheld but for reasons other than those assigned therein. As a sequel thereto, the appeal fails and is dismissed. Parties shall, however, bear their own costs.

**56.** Pending application(s), if any, stand disposed of.