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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
DIPANKAR DATTA; J., AUGUSTINE GEORGE MASIH; J.
SLP (C) NO. 8536 OF 2024; April 9, 2026
CHANNAPPA (D) THR. LRS. *versus* **PARVATEWWA (D) THR. LRS.**

Civil Procedure Code, 1908 — Section 11, Section 105(1), and Order II Rule 2 — Maintainability of Subsequent Suit — Res Judicata and Constructive Res Judicata — The Supreme Court set aside a High Court judgment that had decreed a second suit (Suit-II) for declaration of title and possession, which was filed while an appeal for a previous suit (Suit-I) for injunction and cancellation of an adoption deed was pending – Noted that that the failure to challenge an interlocutory order (specifically the rejection of an application under Order II Rule 2 CPC) at the time it is made does not preclude the party from questioning its correctness while appealing the final decree - The legislative scheme of Section 105(1) ensures that non-appealable interlocutory orders can be assailed in an appeal against the final decree unless a statute expressly mandates otherwise.

Order II Rule 2 CPC — Identity of Cause of Action — Supreme Court held that Suit-II was barred because the foundational facts regarding the property dispute were identical to Suit-I - Since the plaintiff was aware of the defendant's adverse claim of ownership during Suit-I but omitted to seek a declaration of title without obtaining the court's leave, she was precluded from seeking that omitted relief in a subsequent suit.

Section 11, Explanation IV — Constructive *Res Judicata* — The principle of constructive res judicata applies to matters which "might and ought" to have been made a ground of attack in former proceedings - An adjudication is conclusive not only as to actual matters determined but also as to every matter essentially connected with the subject matter of the litigation that the parties ought to have litigated – Held that High Court exceeded its jurisdiction by reassessing the entire factual matrix and interfering with concurrent findings of fact without demonstrating perversity.. Interference in a second appeal is limited to cases involving a "substantial question of law" and should not result in a "third trial on facts." *[Relied on Gurbux Singh v. Bhooralal, AIR 1964 SC 1810; Paras 12-38]*

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For Respondent(s): Mr. Anirudh Sanganeria, AOR Mr. Prakash Jadhav, Adv. Mr. Shailesh Madiyal, Sr. Adv. (NP) Mr. V. N. Raghupathy, AOR Mr. Dilip Nayak, Adv. Mr. Ravichandra Jadhav, Adv. Mr. Sewa Singh, Adv.

J U D G M E N T

DIPANKAR DATTA, J.

1. Leave granted.

THE APPEAL

2. The present appeal stems from the judgment and order dated 30th August 2023 passed by the High Court of Karnataka, Bench at Kalaburagi[1] in RSA No. 200320 of 2016,

[1] High Court

whereby the High Court, in exercise of jurisdiction under Section 100 of the Code of Civil Procedure, 1908[2], allowed the second appeal preferred by the respondents[3] and set aside the concurrent findings recorded by the courts below.

FACTUAL MATRIX

3. Facts giving rise to the *lis* are as follows:

3.1 The husband of Parvatewwa died on 15th January 1961. Shortly thereafter, on 23th March 1961, Parvatewwa is stated to have adopted Channappa.

3.2 After a considerable lapse of time, in the year 2002, Parvatewwa instituted O.S. No. 346 of 2002[4] in the Court of the Principal Civil Judge (Sr. Dn.), Bijapur[5] seeking a declaration that the alleged adoption deed dated 23th March 1961 was null and void and not binding on her, along with a consequential relief of injunction simpliciter.

3.3 The Trial Court dismissed this suit by judgment and decree dated 09th November 2006. Aggrieved thereby, Parvatewwa preferred an appeal under Section 96, CPC being R.A. No. 116 of 2006 before the First Appellate Court.

3.4 During the pendency of R.A. No. 116 of 2006, Parvatewwa instituted a fresh suit on 06th January 2007, being O.S. No. 13 of 2007[6] before the Principal Civil Judge, Senior Division, Bijapur[7]. In the said suit, she alleged that Channappa had illegally dispossessed her from the suit schedule property bearing CTS No. 121/B and sought a declaration of her ownership over the said property along with recovery of possession.

3.5 On 18th June, 2007, Channappa filed his written statement in Suit – II, contending, *inter alia*, that the suit was barred by limitation and was hit by the principles of *res judicata* under Section 11, CPC, and also by Order II Rule 2 thereof, in view of Suit - I. It was specifically pleaded that the parties, the subject matter and the issues involved in both suits were substantially the same and that the appeal arising out of the earlier suit was already pending at the relevant time.

3.6 During the pendency of Suit – II, Channappa filed two applications, being I.A. No. 3 under Section 10, CPC seeking stay of the said suit and I.A. No. 4 under Order II Rule 2, CPC questioning the maintainability thereof. By separate orders dated 27th June 2008, the Trial Court dismissed both the applications. Aggrieved by the rejection of I.A. No. 3, Channappa preferred W.P. No. 40189 of 2008 (GM-CPC) under Articles 226/227 of the Constitution before the High Court. The High Court, however, dismissed the said petition on 3rd February, 2009, thereby affirming the order of the Trial Court.

3.7 Insofar as the earlier proceedings are concerned, R.A. No. 116 of 2006 came to be decided on 23th October 2009. The First Appellate Court dismissed the appeal and confirmed the judgment and decree in Suit – I on the ground of limitation, though certain findings recorded by the Trial Court on Issue Nos. 1 and 3 *qua* the validity of the adoption deed, were reversed.

3.8 Against the findings so recorded, Channappa preferred RSA No. 7305 of 2009 and Parvatewwa filed Cross Objection No. 101 of 2010 challenging the dismissal of the suit

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[2] CPC
[3] Parvatewwa (represented by Prema) and subsequent purchasers
[4] Suit – I, hereafter
[5] Trial Court in OS No. 346 of 2002
[6] Suit – II, hereafter
[7] Trial Court in OS No. 13 of 2007

on the ground of limitation. The Regular Second Appeal was allowed and the cross-objection came to be dismissed, thereby affirming the dismissal of Suit – I.

3.9 Meanwhile, in Suit – II, the parties led evidence. Parvatewwa examined herself as PW-1. Channappa examined himself as DW1 and examined two other witnesses as DW-2 and DW-3.

3.10 Parvatewwa died during the pendency of Suit – II, and Prema was brought in as her legal representative (respondent 1 herein)[8] for prosecuting Suit – II. By judgment and decree dated 24th July 2015, the Trial Court dismissed Suit – II holding that the suit was barred by limitation and further hit by the principles of *res judicata*, constructive *res judicata* and Order II Rule 2, CPC.

3.11 Aggrieved by dismissal of Suit – II, Prema preferred an appeal under Section 96, CPC being R.A. No. 103 of 2015. By its judgment dated 19th August 2016, the First Appellate Court held that the suit was not barred by limitation. However, it confirmed the dismissal of the suit on the grounds of *res judicata*, constructive *res judicata* and under Order II Rule 2 of CPC. Thus, while both the Trial Court in Suit - II and the First Appellate Court recognised Parvatewwa's ownership over the suit schedule properties, the suit ultimately came to be dismissed on technical grounds relating to maintainability.

3.12 Still aggrieved, Prema instituted a second appeal, being RSA No. 200320 of 2016, before the High Court on 05th November 2016, assailing the concurrent findings of the Courts below insofar as they related to invocation of the principles of *res judicata* and Order II Rule 2, CPC. During the pendency of Suit – II itself, Parvatewwa had, on 24th November 2009, alienated the suit property in favour of Dhanraj, Premraj, Ashok, Ramesh and Dinesh, who were subsequently impleaded as appellants 2 to 6 before the High Court and are arrayed as respondents 2 to 6 herein. Channappa had also passed away during the pendency of the RSA, and his legal representatives were impleaded as the respondents before the High Court and are arrayed as the appellants[9] herein.

IMPUGNED JUDGMENT

4. By its judgment dated 30th August 2023, the High Court allowed the said Regular Second Appeal. The High Court decided 3 (three) substantial questions of law. For the reasons assigned, the judgments and decrees of the Courts below on the question of *res judicata* and Order II Rule 2, CPC were set aside and, consequently, Suit – II was decreed in favour of Prema.

5. The substantial questions of law decided by the High Court are not referred to here, since they bear resemblance to the issues we propose to decide now.

ISSUES INVOLVED

6. In view of the aforesaid factual narrative, the following issues fall for determination:

A. Whether Suit – II, instituted by Parvatewwa (since deceased, represented by Prema) was barred by the principles of *res judicata* or constructive *res judicata* under Section 11, CPC, or by the provisions of Order II Rule 2 thereof, in view of the earlier proceedings in Suit – I and the appellate proceedings arising therefrom?

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[8] Prema, hereafter

[9] Channappa (represented through his Legal Representatives)

B. Whether the High Court, in exercise of jurisdiction under Section 100, CPC was justified in interfering with the concurrent findings recorded by the Trial Court and the First Appellate Court on the above question and in decreeing Suit – II?

ANALYSIS BY THE COURT

ISSUE - A

7. At the outset, this Court deems it appropriate to address the submission advanced on behalf of Parvatewwa (represented through subsequent purchasers) that the Trial Court, while deciding I.A. No. 4 in Suit – II, by order dated 27th June 2008 had already held that the cause of action in Suit – I and that in Suit – II were altogether different and that the subsequent suit was therefore maintainable and not barred under Order II Rule 2, CPC. It has further been submitted that the said application filed by Channappa was dismissed by the Trial Court and the revision petition preferred against the same before the High Court also came to be dismissed and, therefore, the finding recorded in the order on I.A. No.4 has attained finality and cannot now be re-agitated. This submission, however, cannot be accepted.

8. At this juncture, it is necessary to clarify a factual aspect which has not been accurately projected. Although it has been urged that the challenge to I.A. No. 4 stood negatived upon affirmation by the High Court, the record would reveal a different position. In fact, two distinct applications had been filed by Channappa in Suit – II, namely, I.A. No. 3 under Section 10, CPC seeking stay of further proceedings in the suit, and I.A. No. 4 invoking Order II Rule 2, CPC questioning the maintainability thereof. Both these applications came to be rejected by the Trial Court on 27th June 2008 by separate orders. However, the writ proceedings instituted thereafter, being W.P. No. 40189 of 2008 (GM-CPC) under Articles 226/227 of the Constitution, were directed only against the rejection of the application under Section 10, CPC (I.A. No. 3). Significantly, no challenge appears to have been laid to the order rejecting I.A. No. 4 under Order II Rule 2, CPC. To that extent, therefore, the premise that the High Court had occasion to examine or affirm the rejection of I.A. No. 4 is not borne out from the record.

9. Quite apart, such an interlocutory order (rejection of I.A. No. 4) is not independently appealable under Section 104 read with Order XLIII, CPC. Nevertheless, sub-section (1) of Section 105, CPC specifically provides that although no appeal lies from such orders, where a decree is appealed against, any error, defect or irregularity in an order affecting the decision of the case may be raised as a ground of objection in the memorandum of appeal. For facility of understanding, sub-section (1) of Section 105, CPC is quoted hereunder:

105. Other orders.—(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

10. Taking note of this provision, the dismissal of I.A. No. 4 by the Trial Court in Suit – II, does not preclude the defendants from questioning the correctness of that order while assailing the final decree passed in the suit. Consequently, it remains open to the defendants to urge before the Appellate Court that the suit was barred under Order II Rule 2 CPC, notwithstanding the earlier rejection of the application raising that plea.

11. At this stage, it would be apposite to notice the underlying object of provisions akin to Section 105, CPC. The legislative scheme does not oblige a party to challenge each and every interlocutory order at the stage at which it is made. Unless a statute expressly

mandates otherwise, such orders may be questioned in an appeal against the final decree. As early as in ***Maharaja Moheshur Singh v. Bengal Government***[10], the Judicial Committee of the Privy Council underscored as follows:

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We are not aware of any law or regulation prevailing in India which renders it imperative upon the suitor to appeal from every interlocutory order by which he may conceive himself aggrieved, under the penalty, if he does not so do, of forfeiting forever the benefit of the consideration of the appellate court. No authority or precedent has been cited in support of such a proposition, and we cannot conceive that anything would be more detrimental to the expeditious administration of justice than the establishment of a rule which would impose upon the suitor the necessity of so appealing; whereby on the one hand he might be harassed with endless expense and delay, and on the other inflict upon his opponent similar calamities.

(emphasis ours)

12. At this juncture, it becomes necessary to closely examine the opening words of Section 105(1) of the CPC, namely, *"Save as otherwise expressly provided ..."* The said expression is of determinative significance, inasmuch as it carves out exceptions to the general rule that interlocutory orders are not independently appealable but may be assailed in an appeal against the final decree. The legislative intent undergirding this phrase is to recognise that where the CPC itself provides a specific mechanism of challenge to certain orders, such orders must be assailed in the manner so prescribed, failing which the right to question them may stand foreclosed.

13. The relevant observations in this regard from ***Arjun Singh v. Mohindra Kumar***[11], are extracted hereinbelow:

11. That the question of fact which arose in the two proceedings was indentical (*sic,* identical) would not be in doubt. Of course, they were not in successive suits so as to make the provisions Section 11 of the Civil Procedure Code, applicable in terms. That the scope of the principle of *res judicata* is not confined to what, is contained in Section 11 but is of more general application is also not in dispute. Again*, res judicata* could be as much applicable to different stages of the same suit as to findings on issues in different suits. In this connection we were 'referred to what this Court said in *Satyadhan Ghosal v. Smt Deorajin Debi, (1960) 3 SCR 590,* where Das Gupta, J. speaking for the Court expressed himself as thus:

'The principle of *res judicata*-is based on the need of giving a finality, to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question, of fact or on a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again….

The principle of *res judicata* applies also as between the two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. …'

Mr Pathak — laid great stress on this passage as supporting him in the two submissions that he made : (1) that an issue of fact or law decided even in an interlocutory proceeding could operate as *res judicata* in a later proceeding, and next (2) that in order to attract the principle of *res judicata*

[10] (1859) 7 Moore's Indian Appeals 283
[11] AIR 1964 SC 993

the order or decision first rendered and which is pleaded as *res judicata* need not be capable of being appealed against.

12. We agree that generally speaking these propositions are not open to objection. If the court which rendered the first decision was competent to entertain the suit or other proceeding, and had therefore competency to decide the issue or matter, the circumstance that it is a tribunal of exclusive jurisdiction or one from whose decision no appeal lay would not by themselves negative the finding on the issue by it being *res judicata* in later proceedings. Similarly, as stated already, though Section 11 of the Civil Procedure Code clearly contemplates the existence of two suits and the findings in the first being *res judicata* in the later suit it is well established that the principle underlying it is equally applicable to the case of decisions rendered at successive stages of the same suit or proceeding. But where the principle of *res judicata* is invoked in the case of the different stages of proceedings in the same suit, the nature of the proceedings, scope of the enquiry which the adjectival law provides for the decision being reached, as well as the specific provisions made on matters touching such decision are some of the material and relevant factors to be considered before the principle is held applicable. One aspect of this question is that which is dealt with in a provision like Section 105 of the Civil Procedure Code which enacts:

'105. (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal. (2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.'

It was this which was explained by Das Gupta, J. in Satyadhayan Ghosal case, already referred to:

'Does this, however, mean that because an earlier stage of the litigation a court had decided an interlocutory matter in one way and no appeal has been taken therefrom or no appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again? … It is clear therefore that an interlocutory order which had not been appealed from either because no appeal lay or even though an appeal lay an appeal was not taken could be challenged in an appeal from the final decree or order.'

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14. It is needless to point out that interlocutory orders are of various kinds; some like orders of stay, injunction or receiver are designed to preserve the status quo pending the litigation and to ensure that the parties might not be prejudiced by the normal delay which the proceedings before the court, usually take. They do not, in that sense, decide in any manner the merits of the controversy in issue in the suit and do not, of course, put an end to it even in part. Such orders are certainly capable of being altered or varied by subsequent applications for the same relief, though normally only on proof of new facts or new situation which subsequently emerge. As they do not impinge upon the legal rights of parties to the litigation the principle of *res judicata* does not apply to the findings on which these orders are based, though if applications were made for relief on the same basis after the same has once been disposed of the court would be Justified in rejecting the same as an abuse of the process of court. There are other orders which are also interlocutory but would fall into a different category. The difference from the ones just now referred to lies in the fact that they are not directed to maintaining the *status quo*, or to preserve the property pending the final adjudication but are designed to ensure the just, smooth, orderly and expeditious disposal of the suit. They are interlocutory in the sense that they do not decide any matter in issue arising in the suit, nor put an end to the litigation. The case of an application under O. IX, Rule 7 would be an illustration of this type. If an application made under the provisions of that rule is dismissed and an appeal were filed against the decree in the suit in which such application were made, there can be no doubt that the propriety of the order rejecting the reopening of the proceeding and the refusal to relegate the party to an earlier stage might be

canvassed in the appeal and dealt with by the appellate court. In that sense, the refusal of the court to permit the defendant to 'set the clock back' does not attain finality. But what we are concerned with is slightly different and that is whether the same Court is finally bound by that order at later stages so as to preclude its being reconsidered. Even if the rule of *res judicata* does not apply it would not follow that on every subsequent day which the suit stands adjourned for further hearing, the petition could be repeated and fresh orders sought on the basis of identical facts. The principle that repeated applications based on the same facts and seeking the same reliefs might be disallowed by the court does not however necessarily rest on the principle of *res judicata*. Thus if an application for the adjournment of a suit is rejected, a subsequent application for the same purpose even if based on the same facts, is not barred on the application of any rule of *res judicata*, but would be rejected for the same grounds on which the original application was refused. The principle underlying the distinction between the rule of *res judicata* and a rejection on the ground that no new facts have been adduced to justify a different order is vital. If the principle of *res judicata* is applicable to the decision on a particular issue of fact, even if fresh facts were placed before the Court, the bar would continue to operate and preclude a fresh investigation of the issue, whereas in the Other case, on proof of fresh facts, the court would be competent, may would be bound to take those into account and make an order conformably to the facts freshly brought before the court.

(emphasis ours)

14. Tested on the afore-canvassed anvil, in the present case, the order on I.A. No. 4 does not tantamount to a final adjudication of rights; nor is it one in respect of which the CPC has *"otherwise expressly provided"* a separate appellate remedy. In such circumstances, the scheme of Section 105, CPC clearly comes into operation, enabling the legal representatives of Channappa to assail the correctness of the said order in an appeal against the decree. To hold that such an order has assumed irrevocable finality would be to defeat the very purpose of Section 105, CPC and to confer upon a non-appealable interlocutory order a status which the legislature has consciously chosen not to accord. Therefore, the contention that the dismissal of the application would operate as a bar to re-agitate the issue is misconceived.

15. Having dealt with the preliminary objection regarding the effect of the order passed on I.A. No.4, this Court now proceeds to examine the core controversy arising in the present appeal.

16. The principal contention advanced on behalf of Channappa (represented through his legal representatives) is that the institution of Suit – II, wherein Parvatewwa sought declaration of ownership and recovery of possession of the suit property, was clearly barred by the provisions of Section 11, CPC as well as Order II Rule 2 thereof. According to the legal representatives of Channappa, Parvatewwa was fully aware, even at the time of institution of Suit – I, that Channappa had asserted rights over the suit properties on the basis of the alleged adoption deed and had disputed Parvatewwa's ownership. In such circumstances, it was incumbent upon Parvatewwa to seek all consequential reliefs flowing from the same cause of action in the earlier proceedings itself.

17. It was further urged by Channappa (represented through his legal representatives) that Parvatewwa, in her evidence in Suit – I had specifically acknowledged that Channappa was claiming ownership over the suit properties. Having been aware of such assertion of right, Parvatewwa ought to have sought declaration of her title and the appropriate consequential reliefs in Suit – I. The omission to do so, it was contended, attracts the bar contained in Order II Rule 2, CPC.

18. *Per contra,* learned counsel appearing on behalf of Parvatewwa (represented by Prema) contended that the two suits were founded on distinct causes of action. According

to them, the earlier suit was confined to the validity of the adoption deed, whereas the subsequent suit arose out of the alleged dispossession of Parvatewwa from the suit property. It was, therefore, argued that Suit - II could not be said to be barred either by *res judicata* or by Order II Rule 2, CPC.

19. Having considered the rival submissions and the materials on record, it is considered appropriate to analyse the controversy in the backdrop of the pleadings and the governing legal principles.

20. The doctrine underlying Order II Rule 2, CPC is founded upon the salutary principle that a defendant ought not to be vexed twice for the same cause of action and that the plaintiff must claim all reliefs arising from a single cause of action in one and the same proceeding. Where a plaintiff omits to claim a relief which he or she is entitled to claim on the same cause of action, he/she is precluded from instituting a subsequent suit in respect of such omitted relief.

21. The requirements for successfully invoking the bar under Order II Rule 2, CPC were authoritatively laid down by the Constitution Bench of this Court in ***Gurbux Singh v. Bhooralal***[12]. It was held as follows:

6. In order that a plea of a Bar under Order 2 Rule 2(3) of the Civil Procedure Code should succeed the defendant who raises the plea must make out; (*i*) that the second suit was in respect of the same cause of action as that on which the previous suit was based; (2) that in respect of that cause of action the plaintiff was entitled to more than one relief; (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the latter suit is based there would be no scope for the application of the bar. No doubt, a relief which is sought in a plaint could ordinarily be traceable to a particular cause of action but this might, by no means, be the universal rule. As the plea is a technical bar it has to be established satisfactorily and cannot be presumed merely on basis of inferential reasoning. It is for this reason that we consider that a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code can be established only if the defendant files in evidence the pleadings in the previous suit and thereby proves to the Court the identity of the cause of action in the two suits. It is common ground that the pleadings in CS 28 of 1950 were not filed by the appellant in the present suit as evidence in support of his plea under Order 2 Rule 2 of the Civil Procedure Code. The learned trial Judge, however, without these pleadings being on the record inferred what the cause of action should have been from the reference to the previous suit contained in the plaint as a matter of deduction. At the stage of the appeal the learned District Judge noticed this lacuna in the appellant's case and pointed out, in our opinion, rightly that without the plaint in the previous suit being on the record, a plea of a bar under Order 2 Rule 2 of the Civil Procedure Code was not maintainable.

22. Applying these principles to the present case, it becomes evident that Parvatewwa had already approached the court in the earlier proceedings on the basis of the same underlying dispute relating to the rights over the suit property. The foundational facts giving rise to the cause of action, namely the claim regarding entitlement to the property, were already in existence at the time of the earlier suit.

23. A comparison of the pleadings and the reliefs sought in Suit – I and Suit – II demonstrates that the cause of action and subject matter in both suits are substantially identical. Parvatewwa had, in the earlier suit, challenged the adoption deed of 1961 and

[12] AIR 1964 SC 1810

sought to restrain the defendants from interfering with her alleged rights over the suit properties. These facts are evident from the pleadings contained in the plaint filed in Suit – I. From the averments, it becomes clear that the plaintiff was already asserting ownership and disputing the rights of the defendants in respect of the same properties. Relevant excerpts from the plaint read thus:

7. …The defendant told the plaintiff that he is the absolute owner of all the properties of the plaintiff mentioned above and said that he has every right to get the money after sale of the properties of the plaintiff. The plaintiff returned to Bijapur and got all the records, though (*sic,* through) the help of Savalagappa and came to know that the defendant has got entered hisame (*sic,* his name) to all the properties of plaintiff in collusion with CTS. Authorities. The plaintiff also came to know that the defendant has created document to show that he is the adopted son and the said document of adoption is registered in the office of Sub-Registrar, Bijapur on 23.3.1961 itself. This fact of adoption is without the knowledge of the plaintiff and behind her back…

8. Cause of action:- the cause of action for this suit arose in the month of September 2002 when the plaintiff has discovered the fraud played by the defendant creating documents that he is the adopted son of plaintiff and falsely got entered his name to all the house properties of the plaintiff as owner.

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11. Prayer:- The plaintiff, therefore, prayer (*sic,* prays) that, the court be pleased to :-

a) Pass a decree declaring that the adoption deed created on 23.3.1961 created by the defendant Showing that the defendant is the adopted son of plaintiff as null and void and inconsequence thereof:

b) Pass a decree of perpetual injunction restraining the defendant or his agents in alienating or transferring the house and shop properties of plaintiff mentioned in para No.2 of the plaint.

(emphasis ours)

24. Despite being fully aware that Channappa had denied her ownership and had asserted rights on the basis of the family arrangement deed of 1998, Parvatewwa chose to institute Suit – I merely seeking injunction simpliciter, without seeking the necessary and consequential relief of declaration of title. Once Channappa had clearly contested Parvatewwa's ownership in the pleadings, it became incumbent upon Parvatewwa to seek the comprehensive relief of declaration of title along with the consequential relief of injunction. The omission to seek such relief in Suit – I is significant and cannot be cured through a subsequent suit. Importantly, there is nothing on record to suggest that Parvatewwa obtained leave of the court to reserve these reliefs for a future proceeding.

25. The consequence of such omission is clearly contemplated under Order II Rule 2(3), CPC, which bars the plaintiff from subsequently instituting a suit for the omitted relief.

26. It is apposite to mention that this Court has recently in ***Cuddalore Powergen Corporation Ltd. v. Chemplast Cuddalore Vinyls Limited and Another***[13] clarified that the rule under Order II Rule 2, CPC is founded on the principle that a person should not be vexed twice for the same cause of action and that the object of this rule is to prevent harassment of the defendant through successive litigation. Relevant excerpt from such decision reads as follows:

47. On a conspectus of the aforesaid discussion, what follows is that:

i. The object of Order II Rule 2 is to prevent the multiplicity of suits and the provision is founded on the principle that a person shall not be vexed twice for one and the same cause.

[13] 2025 SCC OnLine SC 82

ii. The mandate of Order II Rule 2 is the inclusion of the whole claim arising in respect of one and the same cause of action, in one suit. It must not be misunderstood to mean that all the different causes of action arising from the same transaction must be included in a single suit.

iii. Several definitions have been given to the phrase "cause of action" and it can safely be said to mean - "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". Such a cause of action has no relation whatsoever to the defence that may be set up by the defendant, nor does it depend upon the character of the relief which is prayed for by the plaintiff but refers to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour.

iv. Similarly, several tests have been laid out to determine the applicability of Order II Rule 2 to a suit. While it is acknowledged that the same heavily depends on the particular facts and circumstances of each case, it can be said that a correct and reliable test is to determine whether the claim in the new suit is in fact founded upon a cause of action distinct from that which was the foundation of the former suit. Additionally, if the evidence required to support the claims is different, then the causes of action can also be considered to be different. Furthermore, it is necessary for the causes of action in the two suits to be identical in substance and not merely technically identical.

v. The defendant who takes shelter under the bar imposed by Order II Rule 2(3) must establish that (a) the second suit was in respect of the same cause of action as that on which the previous suit was based; (b) in respect of that cause of action, the plaintiff was entitled to more than one relief; and (c) being thus entitled to more than one relief, the plaintiff, without any leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed.

27. In the present case, Parvatewwa herself had pleaded in the earlier proceedings that Channappa was asserting rights over the suit properties on the basis of the adoption. The dispute as to the parties' respective rights over the property was, therefore, already in existence at the time of institution of Suit – I. In such circumstances, the relief of declaration of title and the consequential relief relating to possession could and ought to have been claimed in the earlier proceedings.

28. The subsequent institution of Suit – II seeking declaration of ownership and recovery of possession in respect of the same property and between the same parties is, therefore, clearly hit by the provisions of Order II Rule 2, CPC.

29. The principle of constructive *res judicata* embodied in Explanation IV to Section 11, CPC also becomes relevant in the facts of the present case. A matter which might and ought to have been made a ground of attack in the former proceedings shall be deemed to have been directly and substantially in issue in such proceedings. Parvatewwa, having omitted to seek appropriate relief in Suit – I despite being aware of Channappa's claim, cannot be permitted to agitate the same issue by way of a subsequent suit.

30. The contours of this principle have been lucidly explained by this Court in ***Forward Construction Co. v. Prabhat Mandal (Regd.)***[14] as follows:

20. So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as *res judicata* as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to Section 11 CPC provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject-matter of the

[14] (1986) 1 SCC 100

litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force.

31. The scope of constructive *res judicata* has also been explained in ***Alka Gupta v. Narender Kumar Gupta***[15], where this Court referred to the principle laid down in ***Greenhalgh v. Mallard***[16] and observed that *res judicata* is not confined merely to issues that were actually decided but extends to issues that ought to have been raised in the earlier proceedings. We consider it proper to quote the relevant passage, reading as follows:

25. The principle underlying Explanation IV to Section 11 becomes clear from *Greenhalgh* v. *Mallard* [(1947) 2 All ER 255 (CA)] thus: (All ER p. 257)

"… it would be accurate to say that *res judicata* for this purpose is not confined to the issues which the court is actually asked to decide, but that it covers issues or facts which are so clearly part of the subject-matter of the litigation and so clearly could have been raised that *it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them*."

(emphasis supplied)

32. Similarly, the Constitution Bench in ***Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra***[17] reiterated that an adjudication is conclusive not only as to the matters actually decided but also as to every other matter which the parties might and ought to have litigated in the earlier proceedings.

35. … an adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had decided as incidental to or essentially connected with subject-matter of the litigation and every matter coming into the legitimate purview of the original action both in respect of the matters of claim and defence.

33. The Trial Court in Suit – II and the First Appellate Court, upon appreciation of the pleadings and the evidence on record, had concurrently recorded findings that the subsequent suit was barred by the aforesaid principle. In the considered view of this Court, such findings were in consonance with the settled principles governing the application of Section 11 and Order II Rule 2, CPC.

34. This issue is, thus, answered against Parvatewwa.

ISSUE B

35. The scope of interference in a second appeal under Section 100, CPC is well settled. The jurisdiction of the High Court in such proceedings is confined to cases involving a substantial question of law. Findings of fact concurrently recorded by the courts below cannot ordinarily be interfered with unless such findings are shown to be perverse or based on no evidence.

36. In this context, it would be apposite to advert to the principles reiterated by this Court in ***P. Kishore Kumar v. Vittal K. Patkar***[18], wherein, upon an exhaustive survey of

[15] 2010 SCC OnLine SC 1085
[16] (1947) 2 All ER 255 (CA)
[17] (1990) 2 SCC 715
[18] (2024) 13 SCC 553

precedents, including ***Nazir Mohamed v. J. Kamala***[19] and ***Gurdev Kaur v. Kaki***[20], the scope of interference under Section 100 was enunciated as follows:

16. This Court in *Nazir Mohamed* v. *J. Kamala* [*Nazir Mohamed* v. *J. Kamala*, (2020) 19 SCC 57] has crisply analysed numerous decisions rendered by this Court on Section 100CPC and summarised the law as follows: (SCC pp. 68-69, paras 30 & 33)

"*30*. Where no such question of law, nor even a mixed question of law and fact was urged before the trial court or the first appellate court, as in this case, a second appeal cannot be entertained.…

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33.2. The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue.

33.3. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law."

17. Although it is true that *Nazir Mohamed* [*Nazir Mohamed* v. *J. Kamala*, (2020) 19 SCC 57] is a decision of recent origin and the High Court cannot be said to have the benefit of perusal thereof, there can be little doubt that the law on what would constitute a "substantial question of law" within the meaning of Section 100CPC has not changed over the years and the jurisdiction continues to be limited in the sense that interference ought not to be made unless the appeal involves a substantial question of law as distinguished from a mere question of law.

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39. The first appellate court having examined the facts in extenso, the High Court ought not to have interfered with the findings rendered therein by virtue of being, in second appeal, a court of law. As was astutely said by this Court in Gurdev Kaur v. Kaki [Gurdev Kaur v. Kaki, (2007) 1 SCC 546], a second appellate court is not expected to conduct a "third trial on facts" or be "one more dice in the gamble". The decision rendered by the first appellate court, not being in violation of the settled position of law, ought not to have been interfered with. With utmost respect to the High Court, we are constrained to observe that the question framed by it could be regarded as one of law, if it all, but did not merit the label of a substantial question of law so as to warrant interference with the first appellate decree under Section 100CPC.

37. In the present case, both the Trial Court and the First Appellate Court had independently examined the pleadings, the evidence and the earlier proceedings between the parties and had concurrently held that Suit – II was barred by the principles of *res judicata*, constructive *res judicata* and Order II Rule 2, CPC.

38. Having examined the impugned judgment, we find that the High Court proceeded to reassess the entire factual matrix and arrived at conclusions contrary to the findings concurrently recorded by the courts below. Such an exercise, in the absence of a clear demonstration that the findings of the courts below were perverse or contrary to law, was beyond the permissible limits of jurisdiction under Section 100, CPC.

39. The High Court did not record any cogent reason to demonstrate that the concurrent findings suffered from perversity or were based on a misapplication of settled legal

[19] (2020) 19 SCC 57
[20] (2007) 1 SCC 546

principles. In such circumstances, the interference by the High Court with the concurrent findings of the Trial Court and the First Appellate Court cannot be sustained.

40. This issue too stands answered against the plaintiff.

CONCLUSION

41. In view of the conclusions recorded on the preceding issues, Parvatewwa's claim for declaration of title and recovery of possession cannot be sustained. The High Court committed a manifest error of law in interfering with the concurrent findings recorded by the courts below.

42. The impugned judgment is, accordingly, set aside and Suit – II (O.S. No.13 of 2007) instituted by Parvatewwa stands dismissed.

43. The appeal is, thus, allowed. Parties shall, however, bear their own costs.