

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.332 of 2012**

1. Gajanand, son of Nirbhay Chand, aged about 8 years, through his natural guardian mother Padmani (Appellant No.2),
2. Padmini, D/o. Sanwari Jhariya, aged about 31 years,
Both R/o Village Boro, Tahsil and District Dharamjaigarh, District Raigarh (CG)

----- Appellants/Plaintiffs**Versus**

Nirbhay Chand son of Rameshwar Jhariya, aged about 35 years, R/o. Boro, Tahsil and District Dharamjaigarh, District Raigarh (CG)

----- Respondent/Defendant

For Appellants/Plaintiffs: Ms Sofia Khan, Advocate
For Respondent/Defendant : Mr.Vivek Tripathi, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Judgment On Board****20/02/2020**

1. The substantial questions of law involved, formulated and to be answered in this second appeal preferred by the appellants/plaintiffs are as under:-

"1. Whether lower appellate Court was justified by reversing the judgment and decree by applying principle of res judicata ?

2. Whether lower appellate Court was justified by reversing the judgment and decree on the ground of limitation ?"

[For the sake of convenience, the parties

would be referred hereinafter as per their status shown and nomenclature in the suit before the trial Court].

2. Two plaintiffs filed a suit for declaration of title stating inter-alia that plaintiff No.1 is illegitimate child of plaintiff No.2 and the defendant as the defendant has committed sexual intercourse with plaintiff No.2 by threatening her since October, 1998 and on the pretext of marriage and out of that cohabitation, plaintiff No.1 was born on 3.7.99 and as such, he is illegitimate child of the defendant and prayed that declaration be granted in favour of plaintiff No.1.

3. The defendant has filed his written statement and denied the averments made in the plaint stating inter-alia that plaintiff No.2 is wife of Birbal, but refuted the fact that plaintiff No.1 is his illegitimate child and also brought on record that plaintiff No.1 had filed an application under Section 125 of the CrPC, which was rejected on 13.12.2004 and it was affirmed by the revisional Court on 11.11.2005 (Ex.D-1), in which it has been held that plaintiff No.1 is not son of the defendant, as such, the suit deserves to be dismissed.

4. The trial Court upon evaluation and after

appreciation of oral and documentary evidence available on record, by its judgment and decree dated 24.10.2009, held that plaintiff No.1 is son of the defendant out of cohabitation of plaintiff No.2 and the defendant and granted decree declaring that plaintiff No.1 is child of the defendant. On appeal being preferred by the defendant, the first appellate Court allowed the appeal accepting the plea of res-judicata as well as the plea of limitation and thereby dismissed the suit. Questioning the judgment and decree of the first appellate Court, this second appeal under Section 100 of the CPC has been filed by the appellants/plaintiffs, in which substantial questions of law have been formulated by this Court, which have been set-out in the opening paragraph of this judgment.

5. Ms Sofia Khan, learned counsel for the appellants/plaintiffs, would submit that finding recorded in proceeding under Section 125 of the CrPC would not operate as res-judicata in a subsequent suit filed by plaintiff No.1. She would further submit that the suit is not barred by limitation as it was covered by Article 113 of the Limitation Act, 1963 (hereinafter called as 'Act of 1963') and his

application was firstly rejected on 13.12.2004 and it was re-affirmed by the revisional Court on 11.11.2005 and then the suit was filed on 25.8.2006, as such, the suit filed is within the period of limitation.

6. Mr. Vivek Tripathi, learned counsel for the respondent/defendant, would submit that the first appellate Court is absolutely justified in holding that the suit is barred by limitation and also barred by principle of res-judicata and as such, the second appeal deserves to be dismissed.

7. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

Answer to substantial question of law No.1:-

8. The question for consideration would be, whether the suit is barred by principle of res-judicata as enumerated under Section 11 of the CPC ?

9. In order to answer the plea raised at the Bar, it would be appropriate to consider first Section 11 of the CPC which states as under:-

"11. Res judicata- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between 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.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto."

- 10.** The object and purport of the principle of res judicata as contained in Section 11 of the CPC is to uphold the rule of conclusiveness of judgment, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent suit between the same parties. Once the matter which was the subject-matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a subsequent litigation. Such a rule was brought into the statute book with a view to bring the litigation to an end so that the other side may not be put to harassment. The doctrine of res judicata is conceived not only in larger public interest which requires that all litigation must, sooner than later, come to an end but is also founded on equity, justice and good conscience. (See Swamy Atmananda and others v. Sri Ramakrishna Tapovanam and others¹).

- 11.** In the matter of Satyadhyan Ghosal v. Deorajin

¹ (2005) 10 SCC 51

Devi² the Supreme Court has held that Section 11 CPC enacts the rule of conclusiveness of judgment as to the points decided, in every subsequent suit between the same parties.

- 12.** Sir William B. Hale made remarkable observations on the applicability of principle of res judicata in the following words in the matter of Duchess of Kingstone's case [2 Smith Leading Cases, 13th Ed. Pages 644-645:

"From the variety of cases relative to judgments being given in evidence in civil suits, these two deductions seem to follow as generally true; first that the judgment of a Court of concurrent jurisdiction directly upon the point is as a plea, a bar, or as evidence conclusive, between the same parties, upon the same matter, directly in question in another Court; secondly, that the judgment of a Court of exclusive jurisdiction, directly on the point, is in like manner, conclusive upon the same matter, between the same parties, coming, incidentally in question in another Court, for a different purpose. But neither the judgment of a Court of concurrent or exclusive jurisdiction, is evidence of any matter which came collaterally in question, though within their jurisdiction nor of any matter incidentally cognizable, nor of any matter to be inferred by argument from the judgment."

- 13.** The aforesaid dictum has been approved by the Supreme Court in the matter of Daryao Singh v. State of U.P.³.

- 14.** The Supreme Court in the matter of Syed Mohd.

² AIR 1960 SC 941

³ AIR 1961 SC 1457

Salie Labbai v. Mohd. Hanifa⁴ laid down the conditions for giving effect to the plea of res-judicata and it was held that the following conditions must be proved:-

- (i) That the litigating parties must be the same,
- (ii) that the subject-matter of the suit also must be identical,
- (iii) that the matter must be finally decided between the parties and
- (iv) that the suit must be decided by a Court of competent jurisdiction.

15. The Supreme Court has the opportunity to explain the principle of res judicata in the matter of **Lal Chand v. Radha Krishna**⁵ wherein it has been held that the principle of res judicata is conceived in the larger public interest which requires that all litigation must, sooner than later, come to an end. The principle is also found on equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue.

16. The above-stated proposition has been followed by the Supreme Court in the matter of **Sarguja Transport Service v. S.T.A. Tribunal Gwalior**⁶.

17. Thus, in order to constitute a plea of res-judicata, the following conditions must be existed:

4 AIR 1976 SC 1569

5 AIR 1977 SC 789

6 AIR 1987 SC 88

- (i) There must be two suits one former suit and the other subsequent suit;
- (ii) The Court which decided the former suit must be competent to try the subsequent suit;
- (iii) The matter directly and substantially in issue must be the same either actually or constructively in both the suits;
- (iv) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the Court in the former suit;
- (v) The parties to the suits or the parties under whom they or any of them claim must be the same in both the suits;
- (vi) The parties in both the suits must have litigated under the same title.

18. In the matter of Jaswant Singh and Anr. v.

Custodian of Evacuee Property, New Delhi⁷ it has been held by the Supreme Court that in order that a defence of res judicata may succeed, it is necessary to show that not only the cause of action was the same but also that the plaintiff had an opportunity of getting the relief which he is now seeking in the former proceedings. The test is whether the claim in the subsequent suit or proceedings is in fact founded upon the same cause of action which was the foundation of the former suit or proceedings.

19. In the matter of Madhvi Amma Bhawani Amma v.

Kunjikutty Pillai Meenakshi Pillai⁸ it has been held by the Supreme Court that there should be an issue raised and decided, not merely any finding on any

7 AIR 1985 SC 1096

8 AIR 2000 SC 2301

incidental question for reaching such a decision. So if no such issue is raised and if on any other issue, if incidentally any finding is recorded, it would not come within the periphery of the principle of res judicata.

20. The Supreme Court in the matter of Vishnu Dutt Sharma v. Daya Sapra (Smt)⁹ has held that standard of proof in a criminal case is beyond reasonable doubt, whereas standard of proof in a civil suit is based on "preponderance of probability" and further held that the judgment of a criminal court in a civil proceeding will only have limited application viz. inter alia, for the purpose as to who was the accused and what was the result of the criminal proceedings. Any finding in a criminal proceeding by no stretch of imagination would be binding in a civil proceeding.

21. Reverting to the facts of the present case in the light of principle of res-judicata as enumerated in Section 11 of the CPC and applying the principle of law laid down by the Supreme Court in the above-stated judgments (supra) to the facts of the present case, it would appear that earlier proceeding initiated by plaintiff No.1 was only with regard to proceeding under Section 125 of the CrPC, which was

9 (2009) 13 SCC 729

decided on 13.12.2004, in which it has been held that plaintiff No.1 is not son/illegitimate son of the defendant and that finding has been affirmed by the revisional Court in Criminal Revision No.22/2005 on 11.11.2005 (Ex.D-1). It is quite apparent that in first proceeding under Section 125 of the CrPC, maintenance was claimed, whereas second proceeding is with regard to declaration of status though parties are identical but subject-matter is not identical and nature of first proceeding is different than the second proceeding and as such, the first appellate Court is absolutely unjustified in applying the principle of res-judicata in two proceedings, which were entirely different and therefore, finding recorded by the first appellate Court that the suit is barred by principle of res-judicata deserves to be and is hereby set aside.

Answer to substantial question of law No.2:-

- 22.** It is apparent on the face of record that application under Section 125 of the CrPC filed by plaintiff No.1 was rejected by the Judicial Magistrate First Class, Dharamjaigarh in Misc. Criminal Case No.119/03 on 13.12.2004 and it was affirmed by the revisional Court in Criminal Revision No.22/2005 on 11.11.2005 vide Ex.D-1, the

petition under Section 482 of the CrPC was dismissed as withdrawn on 21st July, 2006 and the suit was filed on 25.8.2006.

23. The question for consideration would be, whether the first appellate Court is justified in holding that the suit is barred by limitation.

24. Section 58 of the Act of 1963 provides as under:-

Sr.No.	Description of suit	Period of limitation	Time from which period begins to run
58.	To obtain any other declaration	Three years	When the right to suit first accrues.

Likewise, Section 113 of the Act of 1963 provides as under:-

Sr.No.	Description of suit	Period of limitation	Time from which period begins to run
113.	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to suit first accrues.

25. The Supreme Court in the matter of **Union of India and others v. West Coast Paper Mills Ltd. and another**¹⁰ brought different distinction between Section 58 and 113 of the Act of 1963 and held as under:-

"20. It was not a case where the respondents prayed for a declaration of their rights. The declaration sought for by them as regard unreasonableness in the levy of freight was granted by the Tribunal.

10 (2004) 2 SCC 747

21.A distinction furthermore, which is required to be noticed is that whereas in terms of Article 58 the period of three years is to be counted from the date when "the right to sue first accrues"; in terms of Article 113 thereof, the period of limitation would be counted from the date "when the right to sue accrues". The distinction between Article 58 and Article 113 is, thus, apparent inasmuch as the right to sue may accrue to a suitor in a given case at different points of time and, thus, whereas in terms of Article 58 the period of limitation would be reckoned from the date on which the case of action arose first, in the latter the period of limitation would be differently computed depending upon the last day when the cause of action therefor arose."

26. The Allahabad High Court in the matter of **Bhoop Singh v. Tarif Singh**¹¹ dealing with Section 42 of the old Specific Relief Act, 1877 has held that suit for bare declaration that the plaintiff is illegitimate son of particular person is competent under Section 42 of the Act. It was further held that suit for declaration as to the plaintiff's status as illegitimate son is covered by Article 120 of the Limitation Act, 1908 (present Article 113 of the Limitation Act, 1963) and held that denial of the plaintiff's status was a fresh encroachment on the latter's right giving rise to a fresh cause of action in his favour. It was observed as under:-

"23. As regards the question of limitation, on which the Courts below differed, the

11 AIR 1952 Allahabad 392

lower appellate Court took an obviously wrong view. The latter Court applied Art. 120, Limitation Act, which is an article applying to cases not provided for by any other article of the Act. It pointed out that the defendant having for a number of years been denying the percentage of the plaintiff, limitation had long since commenced to run against the latter, and that the present suit was, therefore, time-barred. The trial Court, on the other hand, had held that each denial of the plaintiff's status was a fresh encroachment on the latter's right giving rise to a fresh cause of action in his favour. I entirely agree with this view...."

27. In the instant case, application filed by plaintiff NO.1 under Section 125 of the CrPC for grant of maintenance was rejected by the trial Court on 13.12.2004 holding that plaintiff No.1 is not son of the defendant and thereafter it was affirmed by the revisional Court on 11.11.2005 and petition under Section 482 of the CrPC was dismissed as withdrawn on 21.7.2006, but the revisional Court on 11.11.2005 has clearly held that plaintiff No.1 is not son of the defendant and thereafter cause of action arose and the suit was filed on 25.8.2006 i.e. within the period of three years from that day i.e. 11.11.2005 and as such, the suit is within the period of limitation as prescribed under Section 113 of the Act of 1963 and therefore, the first appellate Court is absolutely unjustified in holding that the suit was barred by limitation.

28. For the foregoing reasons, the judgment and decree of the first appellate Court is hereby set aside and that of the trial Court is restored. The substantial questions of law are answered in favour of the plaintiffs and against the defendant.

29. The second appeal is allowed to the extent indicated hereinabove leaving the parties to bear their own cost(s).

30. Decree be drawn-up accordingly.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-