A GOVINDAMMAL (DEAD) BY LRS. AND ORS.

v.

VAIDIYANATHAN AND ORS.

(Civil Appeal No. 5276 of 2008)

OCTOBER 23, 2018

B **[N. V. RAMANA AND MOHAN M. SHANTANAGOUDAR, JJ.]**

Suit:

Suit for declaration of title and permanent injunction for restraining the defendants from entering 'A Schedule' property (which is 50% of 'B Schedule' property) – In the alternative partition C *of half share in 'B Schedule' property was sought – 'B Schedule' property was owned by two brothers – Partition of 'B Schedule' property done in the year 1912 – As per partition, 50% of the 'B Schedule' property i.e. 'A Schedule' property came to the share of predecessors of the plaintiffs – The other 50% share went to the* D *other brother, which was later sold in Court auction to predecessor-in-interest of the defendants – Plea of defendants that their predecessor-in-interest had purchased the entire 'B Schedule' property in the Court auction; and that defendants' title was already declared in two suits filed by a temple and a school against the* E *defendants (wherein plaintiffs were also made party as defendants) and in the cross-suit filed by the defendants against the School – Trial Court decreed the suit and granted the alternative relief of partition – In appeal, order of trial court was reversed by Single Judge of High Court – Division Bench of High Court decreed the suit – On appeal, held: It is not disputed that partition of 'B Schedule'* F *property took place through a registered deed between families of two brothers – 50% share was inherited by plaintiffs – The 50% share of other brother was put in court auction which was purchased by father of defendant – What could be sold in auction was only 50% of 'B Schedule' property and not the share of plaintiffs i.e. 'A Schedule' property – The suits by and against the School and by* G *the temple did not decide the title of defendants qua the plaintiffs as the question of* inter se *title between them was neither in issue nor was required to be decided in those suits – Documents on record do not show exclusive possession of either of the parties – Plaintiffs have satisfactorily proved that they are the owners of the 'A Schedule'* H *property.*

Code of Civil Procedure, 1908:

s.11 – Res judicata – *Applicability of – Between co-defendants – Held: For applying the principle of* res judicata *between co-defendants, there must be conflict of interest between the defendants; it must be necessary to decide the conflict in order to give the relief to plaintiff; and the question between the defendants must have been finally decided – In the facts of the present case, principle of* res judicata *is not applicable.*

Evidence:

Admission – Evidentiary value – Held: Admission is the best piece of evidence – However, admission can always be explained, unless such admission gives rise to the principle of estoppel – Estoppel.

Doctrine:

Doctrine of caveat emptor – *Applicability of.*

Dismissing the appeal, the Court

HELD: 1.1 It is not in dispute that the entire property of 3.18 acres (now reduced to 2.72 acres) was owned by two brothers 'P' and 'C'. It is also not in dispute that a partition took place between the families of the two brothers through a registered partition under which each of them got 50% of the property which ultimately amounted to 1.36 acres each. 50% of the entire property had fallen to the share of the sons of 'P' and the remaining 50% remained with 'C'. Plaintiffs have inherited 50% of the property, i.e., to the extent of 1.36 acres from 'P'. It seems 'C' fell into debt and his property in question was brought to sale through court auction. Father of the defendant was the purchaser in this court auction. Thus, what could be sold in the court auction was only 50% of 2.72 acres which was held by 'C' i.e. 1.36 acres. The remaining 50% of the property (i.e. 'A' Schedule) which vested with the predecessor of plaintiffs could not be sold in the court auction. [Para 5] [1101-D-E, F-G; 1102-A-B]

1.2 In absence of the judgment passed in suit which ultimately ended in court sale, it cannot be said as to whether the entire property was the subject matter of the court sale or not. Since 'C' was the judgment debtor, at the most, only his share in the property could be sold and it is not open for the purchaser to

A **contend that he purchased the entire property though only 50% of the property belonged to the judgment debtor. The purchaser can not get a higher right, title or interest in the property than what vested with the seller. Ultimately the purchaser takes the risk, if he purchases the property which does not belong to the**
B **judgment debtor. The purchaser at an auction sale takes the property subject to all the defects of title, and the doctrine of caveat emptor (let the purchaser beware) applies to such a purchaser. Therefore, even assuming that the court auction sale was held in respect of the entire property, it cannot be said that such sale was valid to the entire extent. At the most, it can be**
C **said that it was valid to the extent of the property which was owned by the judgment debtor i.e. 1.36 out of 2.72 acres. The remaining 50%, i.e., schedule 'A' property was owned by the predecessor of the plaintiffs. [Para 5] [1102-C-E]**

1.3 Present suit is not a mere suit for partition. Primarily
D **it is a suit for declaration of the plaintiffs' title to the suit property, i.e., 'A schedule' property and for permanent injunction restraining the defendants from entering the possession of 'A schedule' property, which is nothing but 50% of the entire 'B Schedule' property which fell to the share of predecessor of plaintiffs.**
E **Alternatively, it was prayed by the plaintiffs that if the plaintiffs and defendant are found to be in joint possession, they be granted the relief of partition and separate possession to the plaintiffs' half share in 'B schedule' property. 'B schedule' property measures 2.72 acres in its entirety, whereas 'A schedule' property is 50% of 'B schedule' property, measuring 1.36 acres, which**
F **fell to the share of predecessor of plaintiffs in the partition of 1912. Since the partition had taken place in 1912 and as the plaintiffs inherited the property from their predecessor, they are entitled to 50% of the share in 'B schedule' property. The Division Bench has rightly held that the plaintiffs are entitled to 'A**
G **Schedule' property, which is the half share allotted to their branch in the partition of 1912, out of 'B Schedule' property. Thus, the question of maintainability raised by the defendant fails. [Para 6] [1102-F-H; 1103-A-B]**

1.4 The plaintiffs need not question the auction sale which was conducted in 1933 inasmuch as, firstly, they are not parties
H **to those proceedings including the execution proceedings and**

court auction. Secondly, by virtue of auction sale, the purchaser would get only the share vested with 'C' inasmuch as he alone was the judgment debtor. The property which is not owned by the judgment debtor could not be sold at all and therefore, even assuming that the sale certificate is wrongly issued in respect of the entire property, the same does not bind the plaintiffs inasmuch they continued to be the owner of 50% of the whole of the property. [Para 7] [1103-C-D]

2.1 It is true that under Section 11 of the CPC, when the matter 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, the decree in the former suit would operate as *res judicata* between the plaintiff and the defendant or as between the co-plaintiffs or co-defendants. If a plaintiff cannot get his claimed relief without trying and deciding a case between the co-defendants, the court will try and decide the case in its entirety including the conflict of interest between the co-defendants and the co-defendants will be bound by the decree. But if the relief given to the plaintiff does not require or involve a decision of any case between co-defendants, the co-defendants will not be bound as between each other. [Para 12] [1106-F-H; 1107-A]

2.2 The requisite conditions to apply the principle of *res judicata* as between co-defendants are that (a) there must be conflict of interest between the defendants concerned, (b) it must be necessary to decide this conflict in order to give the plaintiff the relief he claims and (c) the question between the defendants must have been finally decided. All the three requisite conditions are absent in the present matter. The father of the defendant were colluding in the suits filed by Temple and School. Both of them unitedly opposed those suits. In view of the same, the principles of *res judicata* would not apply. [Para 9] [1104-C-E]

2.3 In the suit filed by the temple against the father of the defendant, the father of the plaintiffs was also arrayed as defendant No. 2. Even in the suit filed by the school, the defendants therein, i.e. father of the plaintiffs and father of the defendant jointly pleaded that the school was not the owner of the property and that the defendants were the owners. Both the suits filed by the temple

A **and the school came to be dismissed. From the facts and the pleadings as well as the evidence recorded in the said suits, it is amply clear that there was no dispute *inter se* between the defendants. Since the question of *inter se* title between the defendant's father and the plaintiffs' father was not in issue and was also not required to be decided in the disputes then raised, obviously, the doctrine of *res judicata* cannot be applied between such co-defendants. [Para 8] [1103-F-H; 1104-B]**

Mt. Munni vs. Tirloki Nath **AIR 1931 PC 114;** *Syed Mohammad Saadat Ali Khan vs. Mirza Wiquar Ali Beg and others* **AIR (30) 1943 Privy Council 115;** *Chandu Lal vs. Khalilur Rahaman* **AIR (37) 1950 Privy Council 17;** *Mahboob Sahab vs. Syed Ismail and others* **(1995) 3 SCC 693;** *Syed. Mohd. Saadat Ali Khan vs. Mirza Wiquar Ali Beg* **AIR 1943 PC 115;** *Shashibushan Prasad Mishra vs. Babuji Rai* **AIR 1970 SC 809;** *Iftikhar Ahmed vs. Syed Meharban Ali*, **(1974) 2 SCC 151 : [1974] 3 SCR 464 – relied on.**

3. It is no doubt true that an admission is the best piece of evidence. However, an admission can always be explained, unless such an admission gives rise to the principle of estoppel. The principle of estoppel could have arisen if the father of the defendant had acted to his detriment on the basis of the representation made by the plaintiffs' father as the basic requirement for attracting the principle of estoppel, is that the person to whom the representation has been made must have acted on the basis of such representation, and particularly to his own detriment. In the present case, the father of the defendant knew about the correct position on facts and he very well knew that he was the owner to the extent of 50% of the property only, and as he did not act to his detriment, the question of estoppel does not arise. [Para 13] [1107-E-G]

4. The Division Bench of High Court has rightly negated the contention of the defendant relating to adverse possession. From the evidence on record, the trial court and the Division Bench of the High Court came to the conclusion that the defendant had failed to prove that he and his predecessor-in-interest had possession over the entire property to the exclusion of the

plaintiffs and their predecessor. No material is found on record which emphatically discloses that the physical delivery of possession of the property was given to the auction purchaser by evicting or in exclusion of all the persons including the plaintiffs' father and the plaintiffs. In the absence of such material, the trial court and the Division Bench have rightly concluded that there was symbolic delivery of possession in favour of the auction purchaser. However, the subsequent documents show joint possession of the plaintiffs and the defendant. Even now the names of both the parties are found in the revenue records. The documents do not show exclusive possession of either of the parties, but would indicate that they are in joint possession. The records and certain other material on record would negative the contention of the defendant relating to adverse possession. [Para 14] [1108-B-F]

Case Law Reference

AIR 1931 PC 114	**relied on**	**Para 9**
AIR (30) 1943 Privy Council 115	**relied on**	**Para 10**
AIR (37) 1950 Privy Council 17	**relied on**	**Para 11**
(1995) 3 SCC 693	**relied on**	**Para 12**
AIR 1943 PC 115	**relied on**	**Para 12**
AIR 1970 SC 809	**relied on**	**Para 12**
[1974] 3 SCR 464	**relied on**	**Para 12**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5276 of 2008

From the Judgment and Order dated 29.01.2007 of the High Court of Judicature at Madras in L.P.A. No. 70 of 2002.

Ms. V. Mohana, Sr. Adv., V. Prabhakar, Mrs. Revathy Raghavan, Ms. Jyoti Prasher, N. J. Ramchandar, R. Reghunath, Sriram P., Sarath S. Janardanan, Kashvi Dutta, K. M. Vignesh Ram, Vijay Kumar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

MOHAN M. SHANTANAGOUDAR, J. 1. The legal representatives of the original defendant in O.S No.45/85 on the file of the Subordinate Judge, Cuddalore are the appellants before this Court. For the sake of convenience, the parties are referred by their status

A before the Trial Court.

2. The suit was filed by the respondents herein, seeking a declaration that 'A schedule' property (as described in the plaint) belongs to them or in the alternative for partition of half share in 'B schedule' property (as described in the plaint) of which 'A schedule' is a part. B According to the plaintiffs (respondents herein), the properties originally belonged to two brothers namely, Pazanivelu Mudaliar and Chokalingam; Pazanivelu Mudaliar had two sons, namely, Narayanaswamy Mudaliar and Manickam. Narayanaswamy had a son named Gnanasambandam Mudaliar. The plaintiffs are the grandsons of Narayanaswamy being the sons of Gnanasambandam. On 21.7.1912, partition took place between C the branches of Pazanivelu and Chokalingam, and the same was signed by Narayanaswamy (since Pazanivelu had expired by then) and Chokalingam. In the said partition, 'A schedule' propertywas allotted to Narayanaswamy and Manickam (who was then a minor), while the remaining 50% of the property left in 'B schedule' was allotted to D Chokalingam. It is relevant to note here itself that the suit property totally measured 3.18 acres at the time of partition in 1912, which subsequently got reduced to 2.72 acres in view of natural calamities, sale of certain portions and resettlement etc. Thus, the share of each branch was reduced to 1.36 acres each. The property consisted of Survey No. 67. Narayanaswamy and Manickam being the sons of Pazanivelu Mudaliar E partitioned the property allotted to the branch of their father in such a manner so as to allot the entire 'A Schedule' property to Manickam, on 5.4.1933, as per Exhibit A-39. The said property allotted in favour of Manickam was sold by him to one Appavu Mudaliar on 11.9.1940 as per Exhibit A-2. On 26.2.1942, the property purchased by Appavu F Mudaliarwas in turn sold in favour of Sambandam Mudaliar. On 9.2.1950, the property purchased by Sambandam Mudaliar was sold to Narayanaswamy Mudaliar as per Exhibit A-3. After the death of Narayanaswamy Mudaliar in the year 1965, the plaintiffs being the grandsons of Narayanaswamy Mudaliar inherited the whole 'A schedule' property.

G

Meanwhile, Chokalingam's half share was sold in a court auction on 21.12.1933 and was purchased by the original defendant's father. There are no records to show that there was delivery of possession pursuant to the court auction sale; at any rate, the court sale could not confer more than the right, title and interest of the judgment debtor, H namely Chokalingam's half interest, which is 1.36 acres out of 2.72 acres

recorded in the resettlement. Unfortunately, the entire 'B Schedule' property which was partitioned in 1912 was never demarcated inasmuch as the same was always used as a house site. Since the resettlement proceedings in 1976, this property comprises 3 pattas numbers. The plaintiffs' father had also been paying house tax. The defendant had no right in 'A schedule' property. The defendant's father and consequently the defendant did not have any right over the property in excess of Chokalingam's half share, i.e., 1.36 acres. On 5.11.1978, in the partition in the family of the plaintiffs and their father, the 'A Schedule' property was allotted to Plaintiff No.2 as per Exhibit A-40. Since the defendant attempted to trespass into the south western portion of the suit property (which falls under 'A Schedule') and prevented the plaintiffs from enjoying the same, the suit came to be filed.

The case of the defendant is that his father purchased the entire extent of Survey Number 67, i.e., 2.72 acres in a court auction (in execution of the decree in O.S.No. 20 of 1918) on 21.12.1933, which was confirmed on 29.9.1934, and possession was delivered to him; after his father's death in 1940, the defendant continued to be in possession. In the year 1975, Shri Puthumariamman Temple, Kurinjipadi filed O.S. No. 66 of 1975 against the defendant and Gnanasambandam Mudaliar (the father of the plaintiffs) in respect of the said property. The said suit came to be dismissed, holding that the temple had no right to the property and that the defendant and his father were entitled to the same. The appeal filed by the temple also came to be dismissed. Thus, the title of the defendant and his father was upheld in the litigation wherein the father of the plaintiffs was a co-defendant along with the defendant as stated above. Subsequently, the SKV High School filed O.S. No. 1289/1974 for declaration of its title over the property, claiming that it had got title over the entire property. The defendant filed O.S. No. 1290/1974 against the SKV High School. The father of the plaintiffs was one of the defendants in O.S. No.1289/1974 filed by the school whereas he was not made party by the defendant in O.S. No.1290/1974. After joint trial in both the suits, the suit filed by the present defendant was decreed declaring his title over the suit property, and the suit filed by the school was dismissed. Such judgment of the Trial Court was confirmed in appeal. The defendant denied the validity of the subsequent sale deeds dated 11.9.1940 and 9.2.1950 in his written statement. Even the later partition dated 5.11.1978 was attacked as a fraudulent and collusive transaction. The defendant claimed to be in exclusive possession of the entire property

A from the date of the court auction, i.e., from 1933 continuously, and that he had acquired right by adverse possession**.** It was also pleaded by the defendant that the defendant's title has already been declared twice by the Civil Court as mentioned supra and therefore, the present suit is barred by the principles of *res judicata*. The claim of joint possession by the plaintiffs was denied by the defendant.

B

3. On a full-fledged trial, the Trial Court decreed the suit and granted the alternative relief of partition. In the first appeal filed by the defendant, the learned Single Judge reversed the judgment of the Trial Court and dismissed the suit. The Letters Patent Appeal filed by the plaintiffs was allowed by the impugned judgment and consequently the suit came to be decreed by the Division Bench of the High Court.

C

4. Shri V. Prabhakar, appearing on behalf of the appellants/LRs of the defendant submitted that the suit for partition is not maintainable inasmuch as even according to the plaintiffs, partition had taken place way back in the year 1912 between the branches of their ancestor

D Pazanivelu Mudaliar and his brother Chokalingam. The auction sale conducted by the court in the year 1933 remained unquestioned by the plaintiffs and their predecessors; since the entire property was sold in the auction sale, the defendant being the purchaser of the property was entitled to the entire property. It was submitted that in the earlier litigations

E filed by the temple and the school in respect of the entire property, the father of the plaintiffs was a co-defendant along with the father of the defendant and had pleaded or given evidence to the effect that the entire property was purchased by the father of the defendant by way of court auction, and that the father of the defendant was in possession as the owner of the same. Such disputes were decided in favour of the father

F of the defendant, upholding his title, and therefore by operation of the principles of *res judicata* as well as estoppel, it could be said that the defendant and his father had the right to own the property and consequently, the plaintiffs did not have any right over 'A Schedule' property. It was also contended that the defendant and his father had

G remained in uninterrupted possession and had been asserting the right consistently and openly from 1933 onwards, and therefore it could be safely said that the defendant had perfected his title by virtue of adverse possession.

Per contra, Smt. V. Mohana, learned Senior Advocate, appearing

H on behalf of the respondents/plaintiffs submitted that the question of any

conflict regarding *inter se* title between the plaintiffs' father and the defendant's father had not been in issue in any of the earlier litigations and, therefore, there was no question of attracting the principles of *res judicata* with respect to the plaintiffs' claim. Similarly, the admission of the plaintiffs' father regarding the right of the defendant's father could not operate as an estoppel as it could not be said that the defendant and his father had acted to the detriment of their interest on the basis of any admission of the plaintiffs' father; even otherwise, such admission could be explained satisfactorily. Since the partition between the branches of the two brothers Pazanivelu and Chokalingam which occurred in the year 1912 through a registered partition deed was not in dispute, 50% of the share vested with the legal heirs of Pazanivelu Mudaliar, i.e., the plaintiffs. It was for the defendant to plead and prove that he had remained in exclusive possession in respect of such 50% of the property to the exclusion of the plaintiffs, adverse to the interest of the plaintiffs for the requisite period; otherwise the question of acquiring right by adverse possession would not arise.

5. It is not in dispute that the entire property of 3.18 acres (now reduced to 2.72 acres) was owned by two brothers, Pazanivelu and Chokalingam. It is also not in dispute that a partition took place between the families of the two brothers i.e., Chokalingam and his brother's son namely Narayanaswamy Mudaliar on 21.7.1912 (since Pazanivelu had expired by then) through a registered partition under which each of them got 50% of the property which ultimately amounted to 1.36 acres each. It is needless to observe that the said Narayanaswamy Mudaliar is the son of Pazanivelu Mudaliar. Subsequently, further partition took place between the two sons of Pazanivelu namely, Narayanaswamy and Manickam on 5.4.1933 in respect of aforementioned 1.36 acres, i.e., 'A' Schedule property allotted to their branch, which was entirely allotted to Manickam in the partition of 1933. This share was subsequently alienated by Manickam, and eventually repurchased by his brother Narayanaswamy. Thus, it is clear that 50% of the entire property had fallen to the share of the sons of Pazanivelu Mudaliar and the remaining 50% remained with Chokalingam. It is not in dispute that the plaintiffs are the grandsons of Narayanaswamy Mudaliar. Thus they have inherited 50% of the property, i.e., to the extent of 1.36 acres. It seems Chokalingam fell into debt and his property in question was brought to sale through court auction. The auction was held on 21.12.1933 and Subbaraya Mudaliar, i.e., father of the defendant was the purchaser in this court

A auction. Said Subbaraya Mudaliar died in the year 1940 leaving behind the defendant. Thus, what could be sold in the court auction was only 50% of 2.72 acres which was held by Chokalingam, i.e. 1.36 acres. The remaining 50% of the property (i.e. 'A' Schedule) which vested with Narayanaswamy and his family could not be sold in the court auction. The order relating to the confirmation of sale in Execution Proceeding Registration No. 2/33 was produced and marked before the Trial Court, which contains the schedule of the property. Unfortunately, none of the parties have produced the judgment passed in O.S. No. 20/1918 which ultimately ended in court sale in E.P. No.2/33. Thus, this Court is not in a position to say exactly as to whether the entire property was the subject matter of the court sale or not. Be that as it may, since Chokalingam was the judgment debtor, at most only his share in the property could be sold and it is not open for the purchaser to contend that he purchased the entire property though only 50% of the property belonged to the judgment debtor. The purchaser can not get a higher right, title or interest in the property than what vested with the seller. Ultimately the purchaser takes the risk, if he purchases the property which does not belong to the judgment debtor. The purchaser at an auction sale takes the property subject to all the defects of title, and the doctrine of caveat emptor (let the purchaser beware) applies to such a purchaser. Therefore, even assuming that the court auction sale was held in respect of the entire property, it cannot be said that such sale was valid to the entire extent. At most, it can be said that it was valid to the extent of the property which was owned by the judgment debtor i.e. Mr. Chokalingam, i.e. 1.36 out of 2.72 acres. The remaining 50%, i.e., schedule 'A' property was owned by Narayanaswamy Mudaliar and his legal representatives.

6. The suit out of which this appeal arises is not a mere suit for partition. On the other hand, primarily it is a suit for declaration of the plaintiffs' title to the suit property, i.e., 'A schedule' property and for permanent injunction restraining the defendants from entering the possession of 'A schedule' property, which is nothing but 50% of the entire 'B Schedule' property which fell to the share of Narayanaswamy Mudaliar. Alternatively, it was prayed by the plaintiffs that if the plaintiffs and defendant are found to be in joint possession, they be granted the relief of partition and separate possession to the plaintiffs' half share in 'B schedule' property. It is relevant to note here itself that 'B schedule' property measures 2.72 acres in its entirety, whereas 'A schedule' property is 50% of 'B schedule' property, measuring 1.36 acres, which

fell to the share of Narayanaswamy Mudaliar in the partition of 1912. Since the partition had taken place in 1912 between Chokalingam and Narayanswamy Mudaliar (being the son of Pazanivelu), and as the plaintiffs inherited the property from Narayanaswamy Mudaliar, they are entitled to 50% of the share in 'B schedule' property. The Division Bench has rightly held that the plaintiffs are entitled to 'A Schedule' property, which is the half share allotted to their branch in the partition of 1912, out of 'B Schedule' property. Thus, the question of maintainability raised by the defendant fails.

7. The plaintiffs need not question the auction sale which was conducted in 1933 inasmuch as, firstly, they are not parties to those proceedings including the execution proceedings and court auction. Secondly, by virtue of auction sale, the purchaser would get only the share vested with Chokalingam inasmuch as Chokalingam alone was the judgment debtor. The property which is not owned by the judgment debtor could not be sold at all and therefore, evenassumingthat thesalecertificate is wrongly issued in respect of the entire property, the same does not bind the plaintiffs inasmuch they continued to be the owner of 50% of the whole of the property.

8. It is no doubt true that in the suit filed by the temple against the father of the defendant, the father of the plaintiffs was also arrayed as Defendant No. 2. It is also not in dispute that the father of the plaintiffs and the father of the defendant by engaging a common advocate filed a common written statement pleading that the temple was not the owner of the property and that Defendant No.1 was the owner of the property. It is also not in dispute that the father of the plaintiffs admitted in the said suit that Defendant No.1 in the said suit, namely, the father of the defendant herein, was the owner of the property. So also, in the suit filed by the school, the father of the plaintiffs was also arrayed as one of the defendants along with the father of the defendant. In the said suit also, a common written statement was filed. Even in the suit filed by the school, the defendants therein, i.e., the father of the plaintiffs herein and father of the defendant herein jointly pleaded that the school was not the owner of the property and that the defendants were the owners. Both the suits filed by the temple and the school came to be dismissed, holding that the temple as well as the school were not the owners of the property. From the aforementioned facts and the pleadings as well as the evidence recorded in the said suits, it is amply clear that there was no dispute

A *inter se* between the defendants. In other words, there was no dispute whatsoever regarding title between the father of the plaintiffs and the father of the defendant in those two suits. The main question to be decided in those suits was whether the third parties who had claimed rights were entitled the property. Since the question of *inter se* title between the defendant's father and the plaintiffs' father was not in issue and was also not required to be decided in the disputes then raised, obviously, the doctrine of *res judicata* cannot be applied between such co-defendants.

9. However, there exist certain situations in which principles of *res judicata* may apply as between co-defendants. This has been recognized by the English Courts as well as our Courts for more than a century. The requisite conditions to apply the principle of *resjudicata* as between co-defendants are that (a) there must be conflict of interest between the defendants concerned, (b) it must be necessary to decide this conflict in order to give the plaintiff the relief he claims and (c) the question between the defendants must have been finally decided. All the three requisite conditions are absent in the matter on hand. Firstly, there was no conflict of interest between the defendants in the suits filed by the temple and the school. Secondly, since there was no conflict, it was not necessary to decide any conflict between the defendants in those suits in order to give relief to the temple or the school, which were the plaintiffs. On the other hand, the father of the plaintiffs and the father of the defendant were colluding in those suits filed by Temple and School. Both of them unitedly opposed those suits. In view of the same, the principles of *res judicata* would not apply. The Privy Council in the case of *Mt. Munni vs. Tirloki Nath*, AIR 1931 PC 114 has observed thus:

> "The doctrine of res judicata finds a place in S.11 Civil P.C., 1908, but it has been held by this Board on many occasions that the statement of it there is not exhaustive; the latest recognition of this is to be found in Kalipada De v. Dwijapada Das [AIR 1980 PC 22]. For the general principles upon which the doctrine should be applied it is legitimate to refer to decisions in this country: see Soorjamonee Dayee v. Suddamund Mahapatter [I.A. Sup, Vol. 212], Krishna Behari Roy v. Banwari Lal Roy [(1874) 1 Cal. 144], Raja Run Bahadur Singh v. Mt. Lachoo Koer [(1885) 11 Cal. 301]. That there may be res judicata as between co-defendants has been recognized by the English Courts and by a long course of Indian decisions. The conditions under which this

branch of the doctrine should be applied are thus stated by Wigram V.C., in Cottingham v. Earl of Shrewsbury [(1843) 3 Hare 627] at 638:

> "If a plaintiff cannot get at his right without trying and deciding a case between co-defendants, the Court will try and decide that case, and the co-defendants will be bound, but if the relief given to the plaintiff does not require or involve a decision of any case between co-defendants, the co-defendants will not be bound as between each other by any proceeding which may be necessary only to the decree the plaintiff obtains."

This statement of the law has been accepted and followed in many Indian cases: see Ahmad Ali v. Najabat Khan [(1895) 18 All. 65], Ramchandra Narayan v.Narayan Mahadev [(1887) 11 Bom. 216], Magniram v. Mehdi Hossein Khan [(1904) 31 Cal. 95]. It is, in their Lordships' opinion, in accord with the provisions of S. 11, Civil P.C., and they adopt it as the correct criterion in cases where it is sought to apply the rule of res judicata as between co-defendants. In such a case therefore three conditions are requisite: (1) There must be a conflict of interest between the defendants concerned; (2) it must be necessary to decide this conflict in order to give the plaintiff the relief he claims; and (3) the question between the defendants must have been finally decided."

(emphasis supplied)

10. Once again, the very principles were restated in the case of *Syed Mohammad Saadat Ali Khan vs. Mirza Wiquar Ali Beg and others,* AIR (30) 1943 Privy Council 115, in which the following observations were made:

> "In order that a decision should operate as res judicata between co-defendants three conditions must exist: (1) There must be a conflict of interest between those co-defendants; (2) it must be necessary to decide the conflict in order to give the plaintiff the relief he claims; and (3) the question between the co- defendants must have been finally decided. There can be no doubt that in the case under consideration the first and third conditions were fulfilled. Whether the second condition existed is the question to be answered. The Chief Court held that it did not exist for the

A reasons appearing in the following extract from their judgment."

11. Almost the same principles were reiterated in the case of *Chandu Lal vs. Khalilur Rahaman*, AIR (37) 1950 Privy Council 17, in which the following observations were made:

B "In Munni Bibi and Another vs. Tirloki Nath, 58 I.A. 158: [AIR (18) 1931 PC 114] the conditions for the application of the doctrine of res judicata as between parties who have been co-defendants in a previous suit are thus laid down: there must be (1) a conflict of interest between the co-defendants, (2) the necessity to decide that conflict in order to give the plaintiff the C appropriate relief, and (3) a decision of that question between the co-defendants. It may be added that the doctrine may apply even though the party, against whom it is sought to enforce it, did not in the previous suit think fit to enter an appearance and contest the question. But to this the qualification must be added that, if such a party is to be bound by a previous judgment, it must be D proved clearly that he had or must be deemed to have had notice that the relevant question was in issue and would have to be decided."

(emphasis supplied)

E In the case of *Md. Saadat Ali* (supra), though the first and third conditions were fulfilled, the second condition was not fulfilled and hence it was held that the principles of *res judicata* will not apply, meaning thereby that all the three conditions should be fulfilled in order to apply the principles of *res judicata*.

12. It is true that under Section 11 of the CPC, when the matter F 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, the decree in the former suit would operate as *res judicata* between the plaintiff and the defendant or as between the co-plaintiffs or co-defendants. For instance, if in a suit by P against G D1 and D2, the matter is directly and substantially in issue between D1 and D2 and adjudication upon that matter was necessary to determine the suit to grant relief to P, the adjudication would operate as *res judicata* in subsequent suits between D1 and D2 in which either of them is plaintiff or defendant. In other words, if a plaintiff cannot get his claimed relief without trying and deciding a case between the co-defendants, the court H will try and decide the case in its entirety including the conflict of interest

between the co-defendants and the co-defendants will be bound by the decree. But if the relief given to the plaintiff does not require or involve a decision of any case between co-defendants, the co-defendants will not be bound as between each other. This Court in the case of *Mahboob Sahab vs. Syed Ismail and others*, (1995) 3 SCC 693, considering the applicability of the doctrine of *res judicata* between co-defendants held that the following four conditions must be satisfied, namely,

> "(1) there must be a conflict of interest between the defendants concerned;
>
> (2) it must be necessary to decide the conflict in order to give the reliefs which the plaintiff claims;
>
> (3) the question between the defendants must have been finally decided; and
>
> (4) the co-defendants were necessary or proper parties in the former suit."

To reach the conclusion mentioned above, this Court relied upon the judgments in the cases of *Syed. Mohd. Saadat Ali Khan vs. Mirza Wiquar Ali Beg*, AIR 1943 PC 115; *Shashibushan Prasad Mishra vs. Babuji Rai*, AIR 1970 SC 809 and *Iftikhar Ahmed vs. Syed Meharban Ali*, (1974) 2 SCC 151.

13. Coming to the question of estoppel as argued by the defendant's counsel based on the admission of the father of the plaintiffs in the pleadings and in his deposition regarding the title of the father of the defendant in the aforementioned earlier litigations, it is no doubt true that an admission is the best piece of evidence. However, an admission can always be explained, unless such an admission gives rise to the principle of estoppel. The principle of estoppel could have arisen if the father of the defendant had acted to his detriment on the basis of the representation made by the plaintiffs' father as the basic requirement for attracting the principle of estoppel, is that the person to whom the representation has been made must have acted on the basis of such representation, and particularly to his own detriment. In the matter on hand, the father of the defendant knew about the correct position on facts and he very well knew that he was the owner to the extent of 50% of the property only, and as he did not act to his detriment, the question of estoppel does not arise. As mentioned supra, it is well settled that in an auction purchase, the auction purchaser does not acquire any right over the property higher than that of the judgment debtor. Since the principles of *res judicata* between co-defendants are not applicable in this case, and since a mere

admission does not operate as an estoppel, such admission does not create or pass any title in favour of the defendant's father and consequently to the defendant. On the other hand, it is apparent that the defendant's father had right over only half of the property in question, which he had purchased.

14. The Division Bench has rightly negated the contention of the defendant relating to adverse possession. From the evidence on record, the trial Court and the Division Bench of the High Court have come to the conclusion that the defendant has failed to prove that he and his predecessor-in-interest had possession over the entire property to the exclusion of the plaintiffs and their predecessor. No material is found on record which emphatically discloses that the physical delivery of possession of the property was given to the auction purchaser by evicting or in exclusion of all the persons including the plaintiffs' father and the plaintiffs. In the absence of such material, the Trial Court and the Division Bench have rightly concluded that there was symbolic delivery of possession in favour of the auction purchaser. However, the subsequent documents show joint possession of the plaintiffs and the defendant. Even now the names of both the parties are found in the revenue records. The documents do not show exclusive possession of either of the parties, but would indicate that they are in joint possession. Exhibits A-7, A-8 and A-9 are the pattas which disclose the names of both the parties in the revenue records. Even the house tax receipts are in the name of the plaintiffs' predecessor. 'A schedule' property has already been subjected to partition *inter se* among the plaintiffs after the death of Narayanswamy Mudaliar and the allotment of property in question, i.e. 'A Schedule' has been made in favour of the second plaintiff as per Exhibit A-40. The aforementioned records and certain other material on record would negative the contention of the defendant relating to adverse possession. The plaintiffs have proved satisfactorily that they are the owners of 'A Schedule' property, i.e., 50% of the property partitioned in 1912, which had ultimately fallen in the share of Mr. Narayanaswamy (grandfather of plaintiffs) as mentioned supra.

15. In view of the same, we do not find any reason to interfere with the impugned judgment of the Division Bench of the High Court passed in L.P.A. No. 70/2002 dated 29.01.2007. The instant appeal accordingly fails and is hereby dismissed.

Kalpana K. Tripathy Appeal dismissed.