A THE CHURCH OF SOUTH INDIA TRUST ASSOCIATION

v.

THE TELUGU CHURCH COUNCIL

JANUARY 10, 1996

B [S.C. AGRAWAL AND B.P. JEEVAN REDDY, JJ.]

Code of Civil Procedure, 1908—Sections 11, 13, 21, 24—Res Judicata—Principle of—Competence of court—Whether extends to territorial jurisdiction—Held : The competence of the court as contemplated by section
C *11 of the Code does not extend to territorial jurisdiction.*

The appellant (CSITA) was an association incorporated under the Indian Companies Act, 1913 for the purpose of holding and administering in trust, the properties, funds etc. of the Church of South India including properties situated in the districts of Cuddapah and Anantpur in the
D **State of Andhra Pradesh. The properties in Andhra Pradesh were transferred to CSITA by the London Missionary Society (LMS) in 1961.**

LMS was an organisation set up by different protestant Christian denominations of propagate their faith in India amongst other countries.
E **The LMS united with churches founded by different missionary societies in India to form a South India United Church which comprised of various church councils.**

The respondent (TCC) was one such council primarily concerned with churches in the Telugu speaking areas of the former Madras
F **Presidency. TCC was registered as a society in 1949.**

As a consequence of an ongoing dispute TCC filed a suit (O.S. No. 2 of 1961/O.S. No. 12 of 1964) against LMS and the Chartered Bank, Madras in Cuddapah *inter alia* seeking for : a) rendition of accounts
G **relating to the funds deposited in various joint accounts of LMS and TCC in the defendant Bank; b) recovery of such sums of money as may be found due; and c) delivery of securities and deposits belonging to TCC.**

It was contended by LMS therein that TCC had ceased to exist in 1947 by virtue of a resolution passed by it in General meeting, effecting
H **a merger with a proposed larger union of churches. This contention was**

resisted by TCC on the ground that it still existed as the resolution was not passed by the requisite majority. A

The trial Court decreed the suit in favour of TCC and held that it continued to exist and function after 1947 without losing its representative character. This decree was affirmed in appeal by a Division Bench of the Andhra Pradesh High Court on November 9, 1970. B

A second declaratory suit O.S. No. 107 of 1991 was filed by CSITA against the Rayalseema Diocesan Council and the Chartered Bank on the original side of the Madras High Court for a declaration that it was entitled to moneys and securities held in the joint accounts of TCC and LMS as on 1947. The suit was dismissed on the ground that the judgement of the High Court passed in 1970 operated as res judicata. The Court also recorded that : a) TCC had voluntarily ceased to exist and had merged with the Church of South India; b) TCC, the defendant association which was registered in 1949 was a new entity and did not represent the old council. C D

In appeal the High Court set aside the finding that the suit was barred by res judicata and decreed the suit in favour of the plaintiffs on the ground that the CSITA and the Rayalseema Dioscesan Council were not parties in the first suit and that LMS could not represent the Church of South India in the proceedings. The finding regarding the merger of TCC was confirmed. E

Earlier TCC had filed two declaratory suits (O.S. No. 41 of 1968 and 26 of 1970) in Cuddapah and Anantpur respectively *inter alia* for : a)a declaration that it was entitled to hold the suit properties as a trustee for the benefit of the Congregationalist churches in the districts; b) a direction to the defendants to put them in possession of the same. It was contended by TCC that the churches founded by LMS were Congregational churches founded in the Telugu speaking areas of the Madras Presidency and that LMS and TCC had set up a joint committee holding in trust for managing these properties and institutions and the transfer of properties in favour of CSITA in 1961 amounted to a disclaimer and a breach of trust, as TCC had ultimately declined to merge with the Church of South India. In rebuttal CSITA contended that TCC had merged with the Church of South India in 1947 and thereafter it had ceased to exist, that the plaintiff council was subsequently registered and F G H

had no connection with the original TCC and that LMS was a mere beneficiary to the properties which did not vest in it. On behalf of the World Council it was contended that the Judgement dated 1970 passed by the Andhra Pradesh High Court did not bind it as it was not a party to the said suit. Both the suits were heard and decreed by a common judgment in favour of TCC on the ground that LMS was a trustee and not a beneficiary and that there was no merger of TCC with the Church of South India, that the judgment of the High Court of 1970 operated as *res judicata* and the subsequent judgment of the Madras High Court dated 1976 relating to the question of merger of TCC did not operate as *res judicata.*

The appeals filed by CSITA were dismissed by the Andhra Pradesh High Court with the finding that : (a) CSITA was litigating as a successor-in-interest of LMS; (b) the finding regarding the merger of TCC recorded in the first suit and confirmed by the Division Bench of the Andhra Pradesh High Court in 1970 binds CSITA; (c) The decision of the Madras High Court passed in 1976 did not operate as *res judicata* since no court in the State of Tamil Nadu can claim to exercise jurisdiction in respect of properties situated in Andhra Pradesh.

In appeal to this court it was contended on behalf of CSITA that for the purpose of Section 11 C.P.C. the competence of the Court to try the subsequent suit means competence in the matter of pecuniary jurisdiction and the subject matter and the fact that the court which decided the earlier suit does not have territorial jurisdiction in respect of the second suit does not preclude the applicability of the principle of *res judicata* under Section 11 CPC. On behalf of the respondents it was contended that the lack of territorial jurisdiction goes to the competence of the Court for the purpose of applicability of the principle of *res judicata* under Section 11 C.P.C.

Allowing the appeals, this Court

HELD : 1.1. Section 11 of the Code of Civil Procedure (excluding Explanation VIII) envisages that the judgement in a former suit would operate as a res judicata if the court which decided the said suit was competent to try the same by virtue of its pecuniary jurisdiction and the subject-matter to try the subsequent suit and that it is not necessary that the said court should have had the territorial jurisdiction to decide the subsequent suit. [342-C-D]

1.2. Explanation VIII to Section 11 C.P.C. removes the limitations that were placed on the principle of res judicata as applicable in India. It would be rather incongruous to read a limitation in the applicability of the said principle by construing the competence of the court to mean that the court which has decided the earlier suit must have territorial jurisdiction to try the subsequent suit. [342-B-C]

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Nabin Majhi **v.** *Tela Majhi & Anr.,* **AIR (1978) Cal. 440 and** *Misir Raghobardial* **v.** *Rajah Sheo Baksh Singh,* **(1881-82) 9 I.A. 197, distinguished.**

Sulochana Amma **v.** *Narayanan Nair,* **[1994] 2 SCC 14, relied upon.**

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1.3. The general principles of *res judicata* **cannot have an application in cases where the earlier judgment in a suit is relied upon in a subsequent suit and that in such a situation the matter has to be examined on the basis of the provisions contained in Section 11 C.P.C. only. [333-A]**

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L. Janakirama Iyer and Ors. **v.** *P.M. Nilakanta Iyer and Ors.,* **[1962] Supp. 1 SCR 206, relied upon.**

1.4. There is near unanimity amongst the High Courts that the words "competent to try" in section 24 of the Code refer to the pecuniary competence of the Court only and do not comprehend the territorial aspect of jurisdiction. In some cases the competence of the court for the purpose of section 11 of the present code has been construed to refer to pecuniary jurisdiction and not to territorial jurisdiction. [339-A; C]

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Krishan Lal **v.** *Balakrishnan,* **AIR (1932) All 661;** *P.M. Unni* **v.** *M.J. Nadar,* **AIR (1973) Mad. 2 (F.B.);** *Mulraj Doshi* **v.** *Gangadhar Singhania,* **AIR (1982) Orissa 191;** *Prabha Singh* **v.** *S. Narsimha Rao,* **AIR (1957) Andhra Pradesh 992;** *Mohd Ali* **v.** *Bhanwari Bai,* **AIR (1981) Raj. 176;** *In re. Aiyisha Bohi Ammal,* **AIR (1925) Mad. 1167 and** *Raghu* **v.** *Gajraj Singh,* **AIR (1939) All. 202, referred to.**

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1.5. The acceptance of the contention urged on behalf of the respondent that for the purpose of section 11 of the present Code, the competence of the court which has decided the earlier suit also postulates the said court having territorial jurisdiction to try the subsequent suit, would mean that the judgment of a court in India which was competent

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A **to try the earlier suit would not operate as *res judicata* in the subsequent suit because the court which decided the earlier suit did not have territorial jurisdiction to try the subsequent suit but the said judgement, if rendered by a foreign court would be conclusive in an Indian Court in a subsequent suit. This anomaly would be avoided if competence of the Court which has decided the earlier suit for the purpose of section 11 of the present Code is construed as not referring to the territorial jurisdiction of the court. [340-C-E]**

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Babanbhat v. *Narharbhat & Ors.*, **ILR (1889) 13 Bom. 224, Referred to** *R. Viswanathan* v. *Rukn-ul-Mulk Syed Abdul Wazid*, **[1963] 3 SCR 22, discussed.**

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2. That the rule of *res judicata* is founded on considerations of public policy and that it is in the interests of the public at large that a finality should attach to the binding decisions pronounced by courts of competent jurisdiction and that it is also in public interest that individuals should not be vexed twice over with the same kind of litigation. [340-F-G]

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Daryao & Ors. v. *The State of U.P. & Ors.*, **[1962] 1 SCR 574 and Law Commissioner 54th Report, referred to.**

3. The principles governing the rule of *res judcata* in England are different from the law governing the said rule in India. [337-D]

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Duchess of Kingston's **case 2 Smith's L.C. 13th Edn. 644;** *Mussumat Edun* v. *Mussumat Bechun 8 Suth.* **W.R. 175;** *Misir Raghobardial* v. *Rajah Sheo Baksh Singh*, **(1881-82) 9 I.A. 197;** *Sir Dinshaw F. Mulla Commentary on the* **Code of 1882;** *Gokul Mandar* v. *Pudmanund Singh*, **(1902) ILR 29 Cal. 707 P.C. and** *Mst Gulab Bai* v. *Manphool Bai*, **[1962] 3 SCR 483, referred to.**

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1547-48 of 1996.

From the Judgment and Order dated 16.6.92 of the Andhra Pradesh High Court in A.S. No. 623-624 of 1979.

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F.S. Nariman, Dr. Julian Francis and A. Mariarputham for the Appellant.

Ms. Indu Malhotra for the petitioner in CC 21473/93 and Respondent in CA Nos. 1547-48/96.

C. Sitaramiah, Narasimha P.S. and P.K. Pillai for the Respondent.

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The Judgment of the Court was delivered by

S.C. AGRAWAL, J. Special Leave granted in S.L.P. (C) Nos. 14501-02 of 1992.

These appeals arise out of two suits (O.S. No. 41 of 1968 and O.S. No. 26 of 1970) filed by the Telegu Church Council (for short `TCC'), respondent herein, in respect of properties of congregationalist churches in the districts of Cuddapah and Anantpur in the State of Andhra Pradesh. O.S. No. 41 of 1968 was in respect of properties and institutions situated in Cuddapah district and O.S. No. 68 of 1970 was in respect of properties situated in Anantpur district. Both the suits were decreed in favour of TCC by the Subordinate Judge, Cuddapah by judgment and decree dated May 7, 1979. The appeals (A.S. No. 623-24 of 1979) filed by the appellants against the said judgment and decree of the Subordinate Judge were dismissed by the Andhra Pradesh High Court by judgment dated June 16, 1992.

The London Missionary Society (for short `LMS') was founded by people belonging to different protestant Christian Denominations in England in 1795 for spreading the Christian faith in various countries including India. LMS missionaries, in course of their activities, started churches, hospitals, educational institutions in various parts of India. In 1899 the London Missionary Society Corporation (for short 'LMSC') was registered as the Trustee under the Companies Act of the United Kingdom for administering the properties of LMS. In 1908 the churches founded by different Missionary Societies, including LMS in South India, unitedly formed a single body known as South India United Church (for short `SIUC'). SIUC became the apex body of various Church Councils. TCC was one of the Church Councils under SIUC in respect of churches in the Telugu speaking area of the former Madras Presidency. The case of the appellant is that on June 29, 1945, pursuant to the efforts to bring about a larger union of Churches involving SIUC, the Church of India, Burma and Ceylon and Methodist Church of South India, a scheme of union was proposed and the said proposal of union was discussed both at the level of various Church Councils as well as at the level of SIUC General Assembly and that TCC, at a meeting, accepted the recommendation of its Executive Committee and resolved by two-third majority to accept the scheme of Church Union. The case of the appellants is further that on September 28, 1946, SIUC resolved to enter into Church Union on the basis of the scheme prepared by the Joint Committee and on February 12/13, 1947 the Executive Body of TCC at its meeting held at Gooty resolved to form a Continuation Committee to carry on TCC's work until the formation of

A Diocesan Council as per the scheme of Union and to wind up the affairs of TCC and that on June 26 to 28, 1947 resolutions were passed in TCC General Body meeting at Cuddapah to join the Union and to dissolve TCC from that day and that TCC ceased to exist thereafter and Continuation Committee constituted by resolution dated February 12/13, 1947 took over its activities B until merger. This fact of merger of TCC into the Church Union, as claimed by the appellants, is, however, disputed by the respondent who claims that the resolution was not passed by two-third majority and that TCC has continued to exist. On September 27, 1947, the Church of South India was inaugurated by special service held at St. George Cathedral, Madras and on September 26, 1947 Church of South India Trust Association (for short 'CSITA'), appellant C herein, was incorporated under the Indian Companies Act, 1913 as trustee for the purpose of holding and administering the properties, funds, etc. of the Church of South India. On June 29, 1949, TCC was registered as a Society under the Societies Registration Act. On February 10, 1961, LMS transferred the properties in the Cuddapah and Anantpur districts in favour of CSITA. D The case of the appellant is that LMS ceased to exist on June 1, 1966 as having merged in the Congregation Council for World Mission.

Subsequent to June 19, 1961, there arose disputes between the respondent and LMS as well as the appellant in relation to properties of the churches E in the districts of Cuddapah and Anantpur in Andhra Pradesh. A suit (O.S. No. 2 of 1961), hereinafter referred to as 'the first suit', was filed by the respondent against LMS and the Chartered Bank, Madras, in the Court of Subordinate Judge, Cuddapah which suit, on transfer to the Court of Second Additional District Judge, Cuddapah, was numbered as O.S. No. 12 of 1964, wherein a decree was sought that the defendants or either of them be directed to render F an account to the plaintiff (TCC) of the funds deposited in various accounts with the defendant Bank in the joint name of TCC and LMS and standing to the credit as up to date and for a decree in favour of TCC against the defendants for recovery of such sums of money as may be found due on taking account and also for delivery of such securities and deposits that should be belonging G to TCC and held by the defendant Bank. The said suit was contested by LMS on the ground that by resolution dated June 19, 1947 TCC had dissolved itself and had ceased to exist and, therefore, the plaintiff (respondent herein) had no right to bring an action. The said suit was decreed by the Second Additional District Judge, Cuddapah by his judgment dated December 3, 1996. The H Second Additional District Judge held that TCC, as it existed prior to 1947, did

not dissolve itself and did not cease to exist and continued to function even thereafter as before and up to date without losing its representative character. The said judgment of the Second Additional District Judge, Cuddapah was affirmed in appeal (A.S. No. 31 of 1967) by the Division Bench of the Andhra Pradesh High Court by judgment dated November 9, 1970.

Another suit (O.S. No. 107 of 1971), hereinafter referred to as `the second suit', was filed by the appellant and the Rayalaseema Diocescan Council against the REV. K. John, representing TCC, respondent herein, and the Chartered Bank, Madras, on the original side of the Madras High Court for a declaration that the plaintiffs are entitled to moneys and securities held by the defendant Bank in its LMS-TCC joint account as in 1947 and for a direction to the defendant Bank to pay to the plaintiffs the securities held in the said joint account or to release Rs. 48,500 and for a direction to the 1st defendant to pay to the plaintiffs the sum of Rs. 13382.130. The said suit was decided by a learned Judge of the High Court (Vardarajan J., as the learned Judge then was) by judgment dated March 24, 1975. The learned Judge held that TCC had voluntarily ceased to exist and had merged with Church of South India inaugurated on September 29, 1947 and that the first defendant association (respondent herein) which was registered only on June 29, 1949 does not represent the old TCC which was merged in the Church of South India. The learned Judge was, however, of the view that the judgment of the Andhra Pradesh High Court dated November 9, 1970 in A.S. 31 of 1967 operates as *res judicata* and he, therefore, dismissed the suit on ground that it was barred by *res judicata*. On appeal the Division Bench of the Madras High Court in its judgment dated September 2, 1976, in O.S.A. 20 of 1976, while confirming the view of the learned trial Judge on the question of merger of TCC in Church of South India, set aside the finding that the suit was barred by *res judicata* and decreed the said suit in favour of the plaintiffs. The learned Judges held that the appellant and the Rayalaseema Diocesan Council, plaintiffs in the suit, were not the parties in O.S. No. 12/64 and LMS which was the first defendant in O.S. No. 12/64 could not have represented the Church of South India.

In the meanwhile, the respondent had filed the two suits giving rise to these appeals, O.S. No. 41 of 1968 was filed by the respondent in the Court of the Subordinate Judge, Cuddapah against the appellant and others for a declaration that the plaintiff (respondent herein) is entitled to hold the suit

properties and institutions as a trustee for the benefit of the Congregationlist churches in Cuddapah district and for a direction to the defendants to put the plaintiff in possession of the same. The other suit (O.S. No. 135 of 1968) was filed by the respondent in the Court of the Subordinate Judge, Anantpur against the appellant and LMS for a declaration that the plaintiff (respondent herein) is entitled to hold the suit properties and institutions as a trustee for the benefit of the Congregationalist churches in Anantpur District and for a direction to the defendants to put the plaintiff in possession of the same. O.S. No. 135 of 1968 was subsequently transferred to the Court of Subordinate Judge, Cuddapah and it was renumbered as O.S. 26 of 1970 and it was tried alongwith O.S. 41 of 1968.

The case of the respondent in these two suits (O.S. 41 of 1968 and O.S. 26 of 1970) was that the churches founded by LMS are congregationalist churches and TCC is the council representing the Congregationalist church founded in Telugu speaking area of Madras Presidency and that the LMS and TCC jointly set up the Telugu Combined Committee for managing properties and institutions with equal number of representatives and that the Church of South India was formed in 1947 with a view to uniting several denominational churches and even though TCC originally approved the scheme to join the Church of South India it ultimately declined and that the transfer of properties by LMS in favour of the appellant by deed dated February 10, 1961 would amount to disclaimer of trust and breach of trust since these properties were held in trust for the Congregationalist churches by the LMS.

These suits were contested by the appellant on the ground that TCC was a constituent body of SIUC and that as a result of the decision taken by SIUC at the General Assembly level and the TCC at the Council level, the TCC had merged in the Church of South India on June 19, 1947 and thereafter it had ceased to exist and the respondent Council, as a subsequently registered body, had no connection with original TCC. It was also contended by the appellant that all the properties were vested in LMSC as Trustee and that LMS was only a beneficiary and that the respondent is not entitled to represent the Congregationalist churches of Anantpur and Cuddapah districts and the suit barred by limitation.

On behalf of the Council for World Mission, the successor of LMS, it was submitted that the judgment of the Andhra Pradesh High Court dated November 9, 1970 in A.S. No. 31 of 1967 was not binding on the appellant

as it was not a party to the said suit. A

Both the suits filed by the respondent were decreed by the Subordinate Judge, Cuddapah on May 7, 1979 on the ground that LMS was a Trustee and not a beneficiary and there was no merger of TCC with the church of South India. The Subordinate Judge further held that the judgment of the Division Bench of the Andhra Pradesh High Court dated November 9, 1970 B in A.S. No. 31 of 1967 operates as *res judicata* and that the subsequent judgment of the Division Bench of the Madras High Court in O.S.A. 20 of 1976 dated September 2, 1976 on the issue of merger of TCC in the Church of South India would not operate as *res judicata*. The Subordinate Judge also rejected the contention regarding the suit being barred by C limitation.

The appeals (A.S. Nos. 623 and 624 of 1979) filed by the appellant against the said judgment and decree of the Subordinate Judge, Cuddapah, have been dismissed by the Andhra Pradesh High Court by the impugned judgment dated June 16, 1992. The High Court has held that the appellant is D litigating as successor-in-interest of LMS and that the finding on the issue as regards merger recorded by the Additional District Judge, Cuddapah, in his judgment dated December 3, 1966 in O.S. No. 12 of 1964 which was confirmed by the Division bench of the Andhra Pradesh High Court in the judgment dated November 9, 1970 in A.S. No. 31 of 1967 binds the E appellant. As regards the decision of the Division Bench of the Madras High Court dated September 2, 1976 in O.S.A. No. 20 of 1976 filed by the appellant it was held that the said decision would not operate as *res judicata* since no court in the State of Tamil Nadu can claim to exercise jurisdiction in respect of properties situate within the State of Andhra Pradesh. The High F Court has held that LMS and LMSC were one and the same body, viz., the London Missionary Society and that churches founded by LMS were Congregationalist churches and, therefore, the suits filed by the respondent seeking declaration to hold the suit properties and institutions as trustee for the benefit of Congregationalist churches was maintainable. Feeling ag- G grieved by the said judgment of the High Court the appellant has filed these appeals.

The matter in issue between the parties is regarding the merger of TCC in the church of South India because the case of the appellant is that the original TCC had merged in the Church of South India and has dissolved H

A itself in June 1947 and that respondent which was registered as a society in 1949 is not the same TCC while the respondent disputes the merger and dissolution of the original TCC and claims that the TCC continued to exist. This dispute has been adjudicated earlier in two suits referred to above, viz., O.S. No. 12 of 1964 decided in favour of the respondent and O.S. No. 107 B of 1971 decided in favour of the appellant. Therefore, the questions which fall for consideration in these appeals are:

(i) Whether the judgment of the Madras High Court dated September 2, 1976 in Appeal (O.S.A. No. 20 of 1976) arising out of O.S. No. 107 of 1971 operates as *res judicata* so as to preclude the C respondent from asserting that the T.C.C. had not merged in the Church of South India;

(ii) Whether the Judgment of the Andhra Pradesh High Court dated November 9, 1970 in A.S. No. 31 of 1967 arising out of O.S. No. 12 of 1964 operates as *res judicata* so as to preclude the appellant D from asserting that TCC had merged in the Church of South India; and

(iii) Whether there was a merger of TCC in the Church of South India in 1947 and the TCC has ceased to exist thereafter.

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If Question No. (i) is decided in favour of the appellant, it would not be necessary to go into Question Nos. (ii) and (iii) because in that event the judgment of the Madras High Court would conclude the questions regarding the merger of TCC as well as the judgment of Andhra Pradesh High Court F operating as *res judicata*. If Question No. (i) is decided against the appellant, it will be necessary to consider Question No. (ii). If Question No. (ii) is decided against the appellant and in favour of respondent, it would not be necessary to go into Question No. (iii). Question No. (iii) would thus be required to be considered only if Question No. (i) is decided against the appellant and Question No. (ii) is decided in their favour. We will, therefore, G first deal with Question No. (i) and examine whether the judgement of the Madras High Court in the second suit operates as *res judicata*.

It is not disputed that the appellant as well as the respondent were both parties in the second suit O.S. No. 107 of 1971 in the Madras High Court. In H the suits giving rise to the present appeals, the other defendant is the L.M.S.

while in O.S. No. 107 of 1971 plaintiff No. 2 was the Rayalaseema Diocession Council claiming through L.M.S. The High Court has held that the judgment of the Madras High Court does not operate as *res judicata* for the reason that the two suits from which the present appeals arise relate to rights in immovable properties situate in the State of Andhra Pradesh and no court in the State of Tamil Nadu can claim to exercise jurisdiction in respect of properties situated within the State of Andhra Pradesh and the Madras High Court, not being a court competent to try such subsequent suit within the meaning of Section 11 C.P.C., any finding recorded by it on any issue would not operate as *res judicata*. It is, therefore, necessary to examine the provisions of Section 11 C.P.C. in order to determine whether lack of territorial jurisdiction in the court which had decided the earlier suit to try the subsequent suit excludes the applicability of Section 11 C.P.C.

We may, at the outset, mention that even though Shri F.S. Nariman, the learned senior counsel appearing for the appellant, had at one stage submitted that apart from the provisions of Section 11 C.P.C. general principle of *res judicata* can also be invoked but subsequently, in view of the decision of this Court in *L. Janakirama Iyer & Ors.* v. *P.M. Nilakanta Iyer & Ors.*, [1962] Supp. 1 SCR 206, he conceded that the general principles of res judicata cannot have an application in cases where the earlier judgment in a suit is relied upon in a subsequent suit and that in such a situation the matter has to be examined on the basis of the provisions contained in Section 11 C.P.C. only. We will, therefore, confine ourselves to the provisions of Section 11 C.P.C.

Section 11. C.P.C. (excluding the Explanations) provides as under :

> *"Section 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."

Shri Nariman has urged that for the purpose of Section 11 C.P.C. the competence of the court to try the subsequent suit means competence in the matter of pecuniary jurisidiction and the subject matter and the fact that the

court which decided the earlier suit does not have territorial jurisdiction in respect of the subsequent suit would not preclude the applicability of the principle of *res judicata* under Section 11 C.P.C. In support of his aforesaid submission Shri Nariman has placed strong reliance on the judgment of the Privy Council in *Misir Raghobardial* v. *Rajah Sheo Baksh Singh*, (1881-82) 9 I.A. 197 and the decisions of this Court in *Gulab Chand Chhotelal Parikh* v. *State of Bombay (Now Gujarat)*, [1965] 2 SCR 547 and *Seth Hiralal Patni* v. *Sri Kali Nath*, [1962] 2 SCR 747.

Shri Sitaramiah, the learned senior counsel appearing for the respondent, has, on the other hand, urged that lack of territorial jurisdiction goes to the competence of the court for the purpose of applicability of the principle of *res judicata* under Section 11 C.P.C. and that the High Court was right in holding that the judgment of the Madras High Court does not operate as *res judicata* since Madras High Court does not have territorial jurisdiction to deal with the suits giving rise to these appeals which relate to immovable properties lying in the State of Andhra Pradesh. Shri Sitaramiah has placed reliance on the decisions of this Court in *Kiran Singh & Ors.* v. *Chaman Paswan & Ors.*, [1955] 1 SCR 117 and *Official Trustee, West Bengal & Ors.* v. *Sachindra Nath Chatterjee & Anr.*, [1969] 3 SCR 92.

The principles governing the rule of *res judicata* in England were laid down in 1776 in *Duchess of Kingston's* case (2 Smith's L.C. 13th Edn. 644) wherein it was said :

> "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 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 upon 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."

The law governing the said rule in India is, however, slightly different. We would, therefore, briefly refer to the legislative history of the provisions regarding *res judicata* in Indian law. The earliest enactment governing the procedure in civil courts in India was the Code of Civil Procedure of 1859

(hereinafter referred to as `the Code of 1859'). Section 2 of the said Code provided :

> "The civil courts shall not take cognizance of any suit brought on a cause of action which should have been heard and determined by a Court of competent jurisidiction in a former suit between the same parties or between the parties under whom they claim litigating under the same title."

In *Mussumat Edun* v. *Mussumat Bechun*, 8 Suth. W.R. 175 Chief Justice Sir Barnes Peacock has considered the said provisions. After referring the rule laid down in *Duchess of Kingston's* case (supra) and the limited nature of the jurisdiction conferred on various courts in India the learned Chief Justice has observed :

> "It appears to me to be of much more importance in this country than it would be in England, that, in order to render a judgment between the same parties, upon the same point in one Court, conclusive in another Court, the two Courts must be Courts of concurrent jurisdiction. If it were not so, the whole procedure, as regards appeals, might be entirely changed." (p. 178)

> "It appears to me, therefore, that the rule which is laid down, viz., that to render a judgment of one Court between the same parties upon the same point conclusive in another Court, the two Courts must be Courts of concurrent jurisdiction. Concurrency of jurisdiction is a necessary part of the rule which creates an estoppel in such a case."

> "It is quite clear that, in order to make the decision of one Court final and conclusive in another Court, it must be a decision of a Court which would have had jurisdiction over the matter in the subsequent suit in which the first decision is given in evidence as conclusive." (p.179)

The Code of 1859 was followed by Code of Civil Procedure, 1877 (hereinafter referred to as `the Code of 1877') which contained the following provisions in Section 13 :

> "No Court shall try any suit or issue in which the matter directly and substantially in issue has been heard and finally decided by a Court of competent jurisdiction, in a former suit between the same parties,

A or between parties under whom they or any of them claim, litigating under the same title."

The said provision came up for consideration before the Privy Council in *Misir Raghobardial* v. *Rajah Sheo Baksh Singh* (supra) wherein the observations of Sir Barnes Peacock C.J. in *Mussumat Edun* v. *Mussumat* B *Bechun* (supra) have been referred with approval and it has been said :

"As to what is a Court of concurrent jurisdiction, it is material to notice that there is in India a great number of Courts, that one main feature in the Acts constituting them is that they are of various grades with different pecuniary limits of jurisdiction, and that by the Code C of Procedure a suit must be instituted in the Court of the lowest grade competent to try it. For instance, in Bengal, by the Bengal Civil Courts Act, No. VL of 1871, the jurisdiction of a munsif extends only to original suits in which the amount or value of the subject matter in dispute does not exceed Rs. 1000. The qualifications of a munsif D and the authority of his judgment would not be same as those of a district or of a subordinate judge, who have jurisdiction in civil suits without any limit of amount. In their Lordships' opinion it would not be proper that the decision of a musif upon (for instance) the validity of a will or of an adoption in a suit for a small portion of the property affected by it should be conclusive in a suit before a district judge or E in the High Court for property of a large amount, the title to which might depend upon the will or the adoption." (p. 203)

Keeping in view the aforesaid position in India, the Privy Council has held :

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"By taking concurrent jurisdiction to mean concurrent as regards the pecuniary limit as well as the subject-matter, this evil or inconvenience is avoided."

"By Court of competent jurisdiction Act X of 1977 means a Court G which has jurisdiction over the matter in the subsequent suit in which the decision is used as conclusive, or in other words, a Court of concurrent jurisdiction." (pp. 204-05)

In the Code of Civil Procedure, 1882 (hereinafter referred to as `the Code of 1882') provision regarding *res judicata* are found in Section 13 but H the words "Court of competent jurisdiction" which were contained in Section

13 of the Code of 1877 were replaced by the words "Court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised." This change in the language was in consonance with the observations made by Sir Barnes Peacock C.J. in *Mussumat Edun* v. *Mussumat Bechun* (supra) and the Privy Council in *Misir Raghobardial* v. *Rajah Sheo Baksh Singh*, (supra). Explaining the expression "competent jurisdiction" Sir Dinshah F. Mulla in his commentary on the Code of 1882 (published in 1900) has said :

> "The test in this case is this : Is the second suit such as could have been tried by the first Court? If yes, the matter can be res judicata. This can only be the case if the jurisdiction of the first court is concurrent with that of the second Court both as regards its pecuniary limit and the subject-matter of the suit."

In view of the aforesaid interpretation placed by the Privy Council on the expression "competent jurisdiction", it has been said that the rule governing applicability of *res judicata* in India is more restricted than the rule law laid down in *Duchess of Kingston's* case (supra) in England. (See : *Gokul Mandar* v. *Pudmanund Singh*, (1902) ILR 29 Cal. 707 P.C.; *Mst. Gulab Bai* v. *Manphool Bai*, [1962] 3 SCR 483, at pp 493-94).

There is no alteration in law in this field in the Code of Civil Procedure, 1908 (hereinafter referred to as "the present Code") because Section 11 of the present Code is substantially in the same terms as Section 13 of the Code of 1882. As regards competence of the Court to try the subsequent suit under Section 11 of the present Code, the Law Commission in its fifty-fourth Report has observed that "the principle behind this condition is sound one, namely, that the decision of a Court of limited jurisdiction ought not to be final and binding on a court of unlimited jurisdiction." (p. 21)

The question which, therefore, arises is whether the competence of the Court, as contemplated in Section 11 of the present Code, extends to territorial jurisdiction also and the Court which has decided the earlier suit should be a Court having territorial jurisdiction to try the subsequent suit. Juridically speaking, the concept of jurisdiction of a court comprehends, (i) pecuniary jurisdiction, (ii) territorial jurisdiction, and (iii) jurisdiction of the subject-matter. (See : *Hirday Nath Roy* v. *Ramachandra Barma Sarma*, ILR 58 Cal. at p. 146; *Official Trustee, West Bengal* v. *Sachindra Nath Chatterjee*, (supra) at p. 100). When Section 11 of the present Code talks of the competence of

A the Court, does it mean the competence in all the three aspects of the jurisdiction of the Court including the territorial jurisdiction of the Court? In order to answer this question, it is necessary to take note of some other provisions of the present Code which give an indication that the present Code makes a distinction between territorial jurisdiction and other aspects of the B jurisdiction of the Court. In Section 21 of the present Code, it has been provided that "no objection as to the place of suing shall be allowed by any appellate or revisional court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice." Having regard to the said provision, it has been held that C though the defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties, the policy of the Legislature has been to treat objections to territorial jurisdiction as technical and not open to consideration D by an appellate Court, unless there has been a prejudice on the merits. (See: *Kiran Singh & Ors.* v. *Chaman Paswan & Ors.* (supra) at pp 121-22). In that case, this Court has also taken note of Section 11 of the Suits Valuation Act, 1887, to hold that even objection as to the pecuniary jurisdiction is technical in nature and not open to consideration by an appellate court, unless there has been a prejudice on the merits. To the same effect in the decision in *Seth* E *Hiralal Patni* v. *Sri Kali Nath* (supra) wherein it has been held that "the objection to its territorial jurisdiction is one which does not go to the competence of the Court and can, therefore, be waived". (at p. 751). In this context reference may also be made to Section 21(A) introduced by the Code of Civil Procedure (Amendment) Act, 1976, which lays down that "no suit F shall lie challenging the validity of a decree passed in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, on any ground based on an objection as to the place of suing."

Under sub-clause (a) of sub-section (1) of Section 24 of the Code, the G High Court or the District Court can transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it or competent to try or dispose of the same. Similarly, under sub-clause (ii) of clause (b) of sub-section (1) of Section 24, the High Court or the District Court can withdraw any suit, appeal or other proceeding in any court subordinate to H it and transfer the same for trial or disposal to any court subordinate to it and

competent to try or dispose of the same. There is near unanimity amongst the High Courts that the words "competent to try" in Section 24 refer to pecuniary competence of the Court only and do not comprehend the territorial aspect of jurisdiction. [See : *Krishan Lal* v. *Balakrishan*, AIR 1932 All. 660 at p. 661 per Sulaiman C.J.; *P.M. Unni* v. *M. J. Nadar*, AIR (1973) Mad. 2 (F.B.); *Mulraj Doshi* v. *Gangadhar Singhania*, AIR (1982) Orissa 191; *Prabha Singh* v. *S. Narasimha Rao*, AIR (1957) Andhra Pradesh 992; *Mohd. Ali* v. *Bhanwari Bai*, AIR (1981) Raj. 176.]

In some cases, the competence of the court for the purpose of Section 11 of the present Code has been construed to refer to pecuniary jurisdiction and not to territorial jurisdiction. [See : *In re. Aiyisha Bohi Ammal*. AIR (1925) Mad. 1167; *Kishorlal* v. *Balkishan* (supra); *Raghu* v. *Gajraj Singh*, AIR 1939 All. 202; *Prabha Singh* v. *S. Narasmha Rao*, (supra)]

Reference may also be made to Section 13 of the present Code which relates to conclusiveness of foreign judgments. Under that Section, except in cases falling under clauses (a) to (f), a foreign judgment is conclusive as to matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title. Exception (a) denies such conclusiveness to a foreign judgment where it has not been pronounced by a court of competent jurisdiction. In the Code of 1882 provisions relating to conclusiveness of foreign judgments were part of the provision regarding *res judicata* contained in Section 13 and in Explanation VI to the said Section it was prescribed that where a foreign judgment is relied on the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by proving the want of jurisdiction. In *Babanbhat* v. *Narharbhat & Ors.*, ILR (1889) 13 Bom. 224, a Division Bench of the Bombay High Court has held that a Court of competent jurisdiction to try such subsequent suit in Section 13 of the Code of 1882 means the "Court having concurrent jurisdiction with the Court trying the subsequent suit, whether as regards the pecuniary limit of its jurisdiction or the subject-matter of the suit, to try it with conclusive effect." Construing the expression "Court of competent jurisdiction" in Explanation VI to Section 13, the Court rejected the contention that it means the court of jurisdiction competent to try the subsequent suit and held that such an interpretation would restrict the application of Section 13 in a way which could not have been intended and would deprive Explanation VI of all meaning. In that case,

A the decree of the court of a native State in respect of property situate within the jurisdiction of the native State deciding the question of adoption in favour of the plaintiff was held to operate as *res judicata* in a suit filed in British India in respect of property situate therein on the basis of the plaintiff being the adopted son.

B In *R. Viswanathan* v. *Rukn-ul-Mulk Syed Abdul Wazid*, [1963] 3 SCR 22, this Court has laid down that "Section 13 incorporates a branch of the principle of *res judicata* and extends it within certain limits to judgments of foreign courts if competent in an international sense to decide the dispute between the parties." (at p. 54)

C The acceptance of the contention urged on behalf of the respondent that for the purpose of Section 11 of the present Code, the competence of the Court which has decided the earlier suit also postulates the said court having territorial jurisdiction to try the subsequent suit, would mean that the D judgment of a court in India which was competent to try the earlier suit would not operate as res judicata in the subsequent suit because the court which decided the earlier suit did not have territorial jurisdiction to try the subsequent suit but the said judgment, if rendered by a foreign court, would be conclusive in an Indian Court in a subsequent suit even though the foreign court which decided the earlier suit does not have territorial jurisdiction to try E the subsequent suit. This anomaly would be avoided if competence of the court which has decided the earlier suit for the purpose of Section 11 of the present Code is construed as not referring to the territorial jurisdiction of the court.

F While construing Section 11 of the present Code, we must bear in mind that the rule of res judicata is founded on considerations of public policy and that is in the interest of the public at large that a finality should attach to the binding decisions pronounced by courts of competent jurisdiction and that it is also in the public interest that individuals should not be vexed twice over with the same kind of litigation. (See : *Daryao & Ors.* v. *The State of U.P. &* G *Ors.*, [1962] 1 SCR 574, at pp. 582-83). The amendments that have been introduced in the present Code by the Code of Civil Procedure (Amendment) Act, 1976, indicate an intention on the part of the Legislature to enlarge the field of applicability of the rule of *res judicata* contained in Section 11. In this regard, it may be mentioned that in its fifty-fourth Report on the present H Code, the Law Commission has expressed the view that the existence of the

conditions regarding the competence of the court to try the subsequent suit to a certain extent detracts from the finality of the judgments and gives rise to a certain amount of multiplicity of proceedings. (at p. 21). According to the Law Commission, the problem is inherent in co-existence of the courts with limited or unlimited jurisdiction and that it can be solved if a court of limited jurisdiction is required to submit case to the district court - which is a court of unlimited jurisdiction - whenever the former is satisfied that the suit involves a question of such a nature that if a suit had been brought for relief based principally on that question, the court would have been incompetent to try the suit. (at p. 25). The Law Commission suggested the insertion of Section 23-A making a provision on these lines. The Law Commission also recommended that the principle of res judicata should be applied to the situations of proceedings in execution and independent proceedings and recommended insertion of Section 11-A for that purpose. Instead of inserting Sections 11-A and 23-A, the apoint Committee of Parliament suggested insertion of explanations to Section 11 and, on the basis of the said report, Explanations VII and VIII have been inserted in Section 11 by the C.P.C. (Amendment) Act, 1976. By Explanation VII the provisions of Section 11 have been made applicable to a proceeding for execution of a decree. Explanation VIII which has a bearing on the question under consideration provides as under :

> "Explanation VIII.- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding, that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised."

Earlier there was a conflict of views among the High Courts on the meaning of expression "a Court of limited jurisdiction" in Explanation VIII. The Calcutta High Court in *Nabin Majhi* v. *Tela Majhi & Anr.,* AIR (1978) Cal. 440, had taken the view that the expression "a Court of limited jurisdiction" in explanation VIII means the Courts other than ordinary civil courts and refers to Revenue Courts, Land Acquisition Courts, Administrative Courts, Insolvency Courts, Guardianship Courts, probate Courts, etc. which are trying certain specific matters. The High Courts of Kerala, Orissa and Madras placed a wider construction on the said expression and held that it includes limited pecuniary jurisdiction also. The said conflict has now been resolved by this Court in *Sulochana Amma* v. *Narayanan Nair,* [1994] 2 SCC 14, wherein, agreeing with

A the view of the High Courts of Kerala, Orissa and Madras, this Court has held that the expression "a Court of limited jurisdiction" would also cover a court of limited pecuniary jurisdiction. (pp. 19-20)

Explanation VIII thus removes the limitations that were placed on the principle of *res judicata* as applicable in India by the Privy Council in *Misir* B *Raghobardial* v. *Rajah Sheo Baksh Singh* (supra). It would be rather incongruous to read a limitation in the applicability of the said principle by construing the competence of the court to mean that the court which has decided the earlier suit must have the territorial jurisdiction to try the subsequent suit. Such a construction would be running against the trend in the development of law C in this field. We are, therefore, of the opinion that Section 11 of the present Code (excluding Explanation VIII) envisages that the judgment in a former suit would operate as a *res judicata* if the court which decided the said suit was competent to try the same by virtue of its pecuniary jurisdiction and the subject-matter to try the subsequent suit and that it is not necessary that the said court should have had territorial jurisdiction to decide the subsequent suit. D On that view of the matter, it must be held that the judgment of the Madras High Court in O.S.A. 20 of 1976 dated September 2, 1976 arising out of second suit (O.S. No. 107 of 1971) operates as *res judicata* in as much as Madras High Court had pecuniary jurisdiction as well as jurisdiction over the subject-matter to try the subsequent suit and it cannot be held that the said judgment does not E operate as *res judicata* for the reason that the Madras High Court does not have territorial jurisdiction to try the subsequent suit relating to properties in Andhra Pradesh.

Once it is held that the judgment of the Madras High Court would operate as *res judicata*, it follows that the decision in that said case regarding F merger of TCC with the Church of South India as well as about the judgment of the Andhra Pradesh High Court in A.S. 31 of 1967 arising out of O.S. 12 of 1961, not being *res judicata*, would be binding on the respondent and the civil suits giving rise to these appeals which were filed by the respondent cannot succeed and have to be dismissed. In the circumstances, it is not necessary to consider Questions Nos. (ii) and (iii) referred to above.

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The appeals are accordingly allowed, the impugned judgment of the Andhra Pradesh High Court dated June 16, 1992 in Appeals Nos. 623-624 of 1979 arising out of O.S. Nos. 41 of 1968 and 26 of 1970 are set aside and the said suits are dismissed. No orders as to costs.

H S.L.P. ...../96 (CC No. 21473/93)

A Delay condoned. A

I.A. No. 3/94 is allowed and the legal heirs of the petitioner as mentioned in the application are brought on record.

The grievance of the petitioner in this petition for special leave to appeal
B against the judgment dated June 16, 1992 passed in Appeal No. 623 of 1979 B
is that the petitioner is claiming title on the basis of adverse possession and enjoyment in respect of certain immovable properties lying in district Anantpur and that the said properties have been included in the schedule to the plaint of the Suit No. O.S. No. 26 of 1970 and by the impugned judgment the said
C properties have been held to be of respondent No. 1, the plaintiff in the said C
suit. It is submitted that the petitioner was not impleaded as a party in the said suit and that in respect of the properties over which the petitioner is claiming title by adverse possession another suit (O.S. No. 31/80) filed by respondent No. 1 is pending. Having regard to the fact that O.S. 26 of 1970 has been dismissed by this Judgment the petitioner can have no subsisting cause for
D grievance. The special leave petition is, therefore, dismissed. D

P.C. Petition dismissed.