2025 INSC 764

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7108 OF 2025

(@SPECIAL LEAVE PETITION (C) NO. 4307 OF 2022)

SULTHAN SAID IBRAHIM …Appellant(s)

VERSUS

PRAKASAN & ORS. …Respondent(s)

J U D G M E N T

J. B. PARDIWALA, J.

1. Leave granted.

2. The path to justice is often winding, shaped by the weight of hierarchy and the labyrinth of procedure. The seeker, weary yet resolute, climbs each rung of the judicial ladder, only to stand at the summit with hope overshadowed by the fear of denied relief. The respondent no. 1 before us embodies this relentless pursuit—a traveller in the quest for justice, yearning for its elusive embrace.

3. The present appeal arises from the judgment and order dated 29.11.2021 passed by the High Court of Kerala at Ernakulam in OP(C) No. 2290 of 2013 whereby the High Court dismissed the original petition filed by the appellant and thereby affirmed the order passed by the Principal Sub Judge, Palakkad in I.A. No. 2348/2012 in O.S. No. 617/1996 rejecting the application filed by the appellant seeking the deletion of his name from the array of parties.

A. FACTUAL MATRIX

4. The appellant is the grandson of one Late Jameela Beevi. Late Jameela Beevi was the original defendant in O.S. No. 617 of 1996, instituted by the

respondent no. 1 herein (original plaintiff) before the Principal Sub Court, Palakkad seeking specific performance of the agreement to sell dated 14.06.1996 executed between the original plaintiff and the original defendant, whereby the original defendant undertook to transfer the suit property to the original plaintiff for a total consideration of Rs. 6,00,000/-, upon payment of the balance sale consideration of Rs. 1,50,000/- within three months from the execution of the agreement. Pertinently, the appellant herein was one of the witnesses to the sale agreement.

5. The suit property, measuring 1 cent, situated in Keezhumuri Desom, Ward No. 3, Block 42, Survey No. 1895, Palakkad Town, Kerala, comprises of a tiled-roofed shop with walls on three sides and two shutters on the front side along with the land on which the shop stands. The same was purchased by the original defendant *vide* assignment deed dated 10.09.1976. It is noteworthy that clause 8 of the said deed if read with the property description indicates the factum of tenancy, *inter alia*, of one of the sons of the original defendant and the father of the appellant, Late Shahul Hameed. It is the case of the appellant that his father was a tenant of the suit property from 1969 till his death on 01.11.1992.

6. The case before us has a convoluted history and there have been delays at multiple stages of the proceedings. Despite having obtained an *ex-parte* decree way long back in 1998, and a final decree after contested hearing in 2003, the original plaintiff is yet to obtain the possession of the suit property. For the sake of clarity, we must look into and discuss the different stages wherein delay was caused under different headings so as to demonstrate how well the process of law can be abused by dubious litigants in this country.

Phase - I

7. The case of the original plaintiff before the Trial Court was that although he was always ready and willing to pay the balance consideration, yet the original defendant was not inclined towards executing the sale deed for the suit property. As the original defendant failed to execute the sale deed within a period of three months from the date of entering into the agreement, despite issuing a legal notice, he instituted a suit for specific performance.

8. The O.S. No. 617/1996 instituted by the original plaintiff was decreed *ex parte* on 30.06.1998 and the original defendant was directed to execute the sale deed in favor of the original plaintiff upon payment of the balance consideration.

9. The original defendant filed I.A. No. 2204 of 1998 seeking to set aside the *ex parte* decree, which was dismissed by the Trial Court on 30.06.1999. The original defendant challenged the order of the Trial Court before the High Court in CMA No. 125 of 1999, which came to be allowed, thereby restoring the suit for trial.

Phase - II

10. Upon restoration, the original defendant filed written statement before the Trial Court contesting that there was no agreement to sell existing between the parties and he had no interest in selling the property. The suit property was being utilised by her son for selling sugar and other grocery items, and she had to obtain a loan of Rs 4,50,000/- for the purpose of the wedding of her granddaughter. In lieu of the loan, the original plaintiff had obtained some signed papers from her and had misused them to forge the agreement to sell.

11. The suit came to be decreed by the Trial Court on 17.03.2003, which held that the execution of the agreement to sell was proved by the original plaintiff and the defence put forth by the original defendant was not credible. The Trial Court directed the original defendant to execute the sale deed upon payment of the remaining sale consideration.

Phase - III

12. The order of the Trial Court decreeing the suit was challenged by the original defendant by way of filing RFA No. 281 of 2003 before the High Court. However, the High Court dismissed the same and affirmed the order of the Trial Court *vide* its judgment dated 02.08.2008.

13. The original defendant further challenged the order of the High Court before this Court by way of SLP (C) No. 18880 of 2008. However, the same also came to be dismissed *vide* order dated 13.08.2008, thereby conclusively affirming the decree for specific performance granted by the Trial Court.

Phase - IV

14. Upon failure of the original defendant to execute the sale deed after accepting the balance consideration, the original plaintiff moved the I.A. No. 2548/2003 in O.S. No. 617/1996 under Section 28(5) read with Order XXI Rule 19 of the Code of Civil Procedure (for short, "**the CPC**") on 30.07.2003 seeking the execution of the sale deed in its favour by the intervention of the court.

15. During the pendency of the execution proceedings, the original defendant passed away on 19.10.2008, necessitating impleadment of her legal heirs. The original plaintiff filed I.A. No. 3823 of 2008 in I.A. No. 2548/2003 in

O.S. No. 617/1996 on 20.11.2008 to bring her legal heirs on record which came to be allowed by the Trial Court.

16. Objections were raised by some of the legal heirs of the original plaintiff, *inter alia*, on the ground that the relief of possession was not granted by the Trial Court despite having been pleaded and thus there was no liability to hand over the possession to the original plaintiff even if a sale deed had to be executed. Further, the original plaintiff had failed to deposit the entire balance sale consideration in time and had deposited only the balance amount after deducting the costs awarded by the Trial Court while decreeing the suit. For the aforesaid reasons, the execution was objected on the ground that the contract stood rescinded. It is pertinent to note that the appellant herein, being one of the impleaded parties, initially raised no objection to his impleadment.

17. I.A. No. 669/2009 in O.S. No. 617/1996 under Section 28 of the Specific Relief Act, 1963 (for short, "**the SRA, 1963**") was also filed by some of the legal heirs of the original defendant seeking a declaration that the contract stood rescinded.

18. The Principal Sub Court, Palakkad, dismissed the I.A. No. 669 of 2009 on 11.04.2012, observing that the deposit of Rs. 97,116/- made on 30.07.2003

by the original plaintiff was valid and in compliance with I.A. No. 931 of 2004, wherein the High Court, during the pendency of the first appeal against the decree, had permitted the respondent to deposit the balance amount after deducting costs. The court further ruled that possession of the property was implicit in the decree for specific performance of the agreement to sell.

Phase - V

19. Aggrieved by the aforesaid, the legal heirs of the original defendant filed CRP No. 233 of 2012 before the High Court of Kerala, which came to be dismissed on 14.06.2012, affirming that rescission of contract was unwarranted.

Phase - VI

20. Shortly thereafter, the appellant filed I.A. No. 2348 of 2012 in I.A. No. 2548/2003 in OS No. 617 of 1996 on 19.07.2012 under Order I Rule 10(2) of the CPC seeking deletion of his name from the array of parties, on the ground that he was wrongly impleaded as a legal heir under the Mohammedan Law and further asserting that he was a tenant in the suit property, having inherited the tenancy from his late father. He submitted that he was carrying on business from the suit property and his tenancy rights

could not have been adjudicated in the execution proceedings. The original plaintiff objected to the said I.A., *inter alia*, on the ground that the appellant had failed to raise any of the said objections on any prior occasion and was doing the same only to obstruct and delay the execution proceedings.

21. The Trial Court dismissed the said I.A. on 19.06.2013 and held that the appellant was attempting to delay the execution by raising frivolous issues and that too after having failed to raise during the prior proceedings. The court noted that the appellant was a witness to the sale agreement dated 14.06.1996, had previously participated in litigation without objecting, and was now employing a strategy of filing repetitive interlocutory applications to obstruct the execution of the decree. The relevant observations made by the Trial Court are reproduced hereinbelow:

> *"[...] The records would show that supplemental respondents 2 to 14 in I.A. 2548/2003 were sought to be impleaded as per I.A. 3823/2008. On filing that petition notice thereof was issued on 26.11.2008 to the proposed supplemental respondents 2 to 14. Those respondents tendered appearance. That was the first opportunity for the petitioner herein to contend that he is not a legal heir of Jameela Beevi and he ought not to be impleaded. That was not done by him. It is to be noted that the court would implead under Order XXII Rule 4 CPC after due enquiry. During that enquiry the petitioner ought and might have contended that he is not a legal heir of Jameela Beevi. After his impleadment several petitions were preferred. I.A. 669/2009 is a petition under section 28 of the specific Relief Act to rescind the contract. The petitioner herein was a respondent in that petition. After*

detailed enquiry that petition was dismissed on 11.04.2012. Against that order CRP 233/12 was preferred before the Hon. High Court. The petitioner herein was the 5th respondent in that CRP. That CRP was dismissed on 14.06.2012. In these proceedings also petitioner herein had no case that he is an unnecessary party. On the other hand, he participated in those proceedings. On 24.07.2012 this petition is filed. It is to be noted that the decree directing execution of sale deed was passed on 17.03.2003, a decade ago, RFA 281/2003 was dismissed on 02.04 2008. The decree attained finality. I.A.2548/2003 was pending while dismissing RFA 281/2003. Since then the supplemental respondents, one after other, is filing petitions in their cunning strategy to delay the execution of a sale deed pursuant to the decree, I.A. 669/2009 was one such petition, CRP 233/2012 against the order of dismissal of that petition was dismissed on 14.06.2012, Next month, on 24.07.2012, the petitioner has come forward with this petition, on experimental basis to open a new battle field, on the frantic attempt to delay the implementation of the decree, claiming tenancy right over the subject property alleged to be inherited from his father. So long as he is in the party array as legal heir of deceased original defendant the new plea cannot be put forward. It is to circumvent that situation now he has come forward with this plea to remove him from the party array as he being not a legal heir of Jameela Beevi despite the fact that such a plea was not taken over these years either at the time of his impleadment or while participating in a series of interlocutory applications. This petition, is yet another ruse adopted by the respondents to delay the execution of a sale deed pursuant to the decree. The petition is barred by constructive resjudicata besides being devoid of bonafides. Therefore, it is dismissed with cost to the 1st respondent/plaintiff."

22. The appellant challenged the order of the Trial Court before the High Court in O.P. (C) No. 2290 of 2013, however the same came to be dismissed *vide* the impugned order dated 29.11.2021. The High Court observed that the impleadment of the appellant was valid and his I.A. seeking deletion from

the array of parties was barred by *res judicata*. The High Court also observed that the claim of the appellant for independent possession was also rightly rejected by the Trial Court. The relevant observations made by the High Court are reproduced hereinbelow:

> *"5. The undisputed facts reveals that the petitioner, along with other legal heirs of Jameela Beevi, were impleaded after due enquiry under Order I Rule 10 (2) of CPC. No objection was raised by the petitioner at that stage and the order by which he was impleaded as the additional 8th respondent has become final. Hence, the interlocutory application filed thereafter, seeking deletion of petitioner's name from the party array, is barred by res judicata.*
>
> *6. The contention of the petitioner that he is having independent possession over the property was rightly rejected by the trial court, petitioner having failed to raise such contention earlier or even in I.A.No.669 of 2009, filed by his own siblings. Circumstances being as above, I am constrained to hold that the attempt of the petitioner is to delay the consideration in I.A.No.2548 of 2003 filed by the first respondent, seeking execution of the sale deed through court."*

23. In such circumstances referred to above, the appellant-original defendant has come up before us with the present appeal.

B. SUBMISSIONS ON BEHALF OF THE APPELLANT

24. Mr. V. Chitambaresh, the learned Senior Counsel, appearing for the appellant, vehemently submitted that the High Court committed a grave error in taking the view that as the impleadment of legal heirs under Order

I Rule 10(2) of the CPC was not objected to by the appellant at the appropriate stage, the subsequent application filed by the appellant for deletion of his name would be barred by virtue of the doctrine of *res judicata*.

25. The learned counsel submitted that in the instant case, since the relief of possession was not granted in O.S No. 617 of 1996 while decreeing the suit for specific performance, the decree got fully satisfied upon execution of the sale deed. The counsel placed reliance on the judgment of this Court in ***Birma Devi & Ors v. Subhash & Anr.***, reported in **2024 SCC Online SC 3676**, wherein it was held that relief of possession must be specifically sought when the suit property is in possession of a third party. He also referred to the decision in ***P.C. Varghese v. Devaki Amma Balambika Devi*** reported in **(2005) 8 SCC 486** wherein this Court held that Section 22 of the SRA, 1963 enacts a rule of pleading to avoid multiplicity of proceedings.

26. The learned counsel further argued that Section 11 of the Kerala Buildings (Lease and Rent Control) Act, 1965, contains a *non obstante* clause restricting eviction except in accordance with the provisions of the said Act. Therefore, before ordering delivery of possession, the status of the appellant as a tenant must necessarily be adjudicated.

27. Relying on the decision of this Court in ***B. Bal Reddy v. Teegala Narayana Reddy*** reported in **(2016) 15 SCC 102**, the counsel submitted that the interest of a protected tenant continues to be operative and subsisting so long as the protected tenancy is not validly terminated.

28. The learned counsel pointed out that the father of the appellant, Late Shahul Hameed, was a tenant in the suit property since the year 1969, and the assignment deed No. 2805/1976 acknowledges his tenancy, which continued with the appellant as his legal heir. Further, in 1992, Municipality License No. 215/92-93 was also issued in the name of the father of the appellant. He contended that the Municipality License No. PH2-27607/11 was thereafter issued in the name of the appellant on 16.04.2011 thereby showing the exclusive possession of the appellant on the suit property owing to the tenancy.

29. It was also contended that under the Mohammedan Law, the legal heirs of a pre-deceased son are not the legal heirs of their grandmother, who in the instant case was the original defendant and the judgment debtor. The doctrine of representation does not apply under the Mohammedan Law. The sale deed also indicates that the property was individually owned by Jameela Beevi, and the descendant of her pre-deceased son would have no legal

claim. As a sequitur, the tenancy rights of the appellant cannot be adjudicated and decided upon by impleading him as a legal heir.

30. The learned counsel stressed that an order allowing impleadment under Order I Rule 10(2) of the CPC is merely a summary procedure and cannot operate as *res judicata*. Placing reliance on the decision in ***Mumbai International Airport (P) Ltd. v. Regency Convention Centre & Hotels (P) Ltd.*** reported in **(2010) 7 SCC 417**, he submitted that this Court in the said decision held that the courts retain the power to strike out parties at any stage of the proceeding under Order I Rule 10(2) of the CPC.

31. The learned counsel also referred to the decision in ***Ramankutty Guptan v. Avara*** reported in **(1994) 2 SCC 642**, wherein this Court held that jurisdiction of the court does not cease after passing a decree for specific performance, and the court retains control over the decree. He also submitted that the appellant has no role in the application filed for the recission of contract.

32. In such circumstances referred to above, the learned counsel prayed that there being merit in his appeal, the same may be allowed.

C. SUBMISSIONS ON BEHALF OF THE RESPONDENT

33. Mr. Mukund P. Unny, the learned counsel appearing for respondent no.1, vehemently submitted that the present appeal has been filed solely with a view to delay the execution of the decree, despite the fact that the judgment and decree dated 17.03.2003 in favor of respondent no.1 attained finality after dismissal of the SLP(C) No. 18880 of 2008 arising therefrom on 13.08.2008. He emphasised that the respondent no.1 has not been able to obtain possession of the suit property and thereby reap the fruits of the decree in his favour due to persistent attempts by the appellant to stall execution proceedings.

34. The learned counsel referred to the findings of the High Court in the impugned order wherein the challenge by the appellant to the dismissal of IA No. 2348 of 2012 seeking deletion of the appellant from the party array was rejected. He argued that the key finding of the High Court is that the impleadment under Order I Rule 10(2) of the CPC had already attained finality and that the belated attempt by the appellant to question the same was barred by *res judicata*.

35. The learned counsel also brought to our attention the observations made by the Trial Court while dismissing the IA No. 2348 of 2012 in OS No. 617 of 1996. He submitted that the Trial Court took note of the following:

a. The appellant had ample opportunity in prior proceedings to object to his impleadment but failed to do so.
b. The appellant, rather than raising an objection to his impleadment, participated in the proceedings, including the application to rescind the contract.
c. The appellant through various frivolous petitions was seeking to delay the execution of the decree dated 17.03.2003.

36. On the aspect of tenancy rights of the appellant in the suit property, the learned counsel submitted that the claim of tenancy in the suit property inherited from the father of the appellant is devoid of merit. He argued that the tenancy arrangement mentioned in the 1976 sale deed by which Jameela Beevi purchased the suit property, was not carried forward in the sale agreement of 1996, to which the appellant himself was a witness. The learned counsel emphasized that there is no documentary evidence, much less any other evidence, to support the claim of tenancy raised by the appellant.

37. On the aspect of tenancy, he submitted that unlike the assignment deed of 1976, the agreement to sell of 1996 did not contain any clause conferring or transferring the right to deal with tenants to the proposed buyer. He argued that such omission indicates that the tenancy rights did not carry forward after the death of the father of the appellant.

38. The learned counsel pointed out that the suit for specific performance was decreed in OS No. 617 of 1996, and the execution proceedings were initiated thereafter. Despite the decree being affirmed right upto this Court, the appellant and his family have been repeatedly filing interlocutory applications to delay the execution. He pointed out that IA No. 669 of 2009, seeking rescission of the contract, was dismissed by the Trial Court, and the dismissal was affirmed by the High Court in CRP No. 233 of 2012.

39. The learned counsel pointed out that the High Court, in the impugned judgment, upheld the findings of the Trial Court, rejected the claims of the appellant and reaffirmed the impleadment under Order I Rule 10(2). The High Court also observed that the contention of the appellant regarding tenancy was baseless and did not warrant interference.

40. The learned counsel submitted that the sale deed has already been executed on 22.11.2022 at the instance of the Trial Court. However, the appellant has

locked the premises, preventing the original plaintiff from obtaining actual possession. In view of this, he argued that the present appeal is infructuous as it seeks relief that is no longer relevant.

41. In such circumstances, the learned counsel prayed that there being no merit in this appeal, the same deserved to be dismissed with costs.

D. ISSUES FOR CONSIDERATION

42. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

a. Whether the High Court committed any error in rejecting the original petition filed by the appellant on the ground that the I.A. for deletion of name of the appellant from the array of parties was barred by *res judicata*?

b. Whether the appellant is entitled to the benefit of Section 11 of the Kerala Buildings (Lease and Rent Control) Act, 1965?

c. Whether in the facts of this case the transfer of possession of the suit property was implicit in the decree of specific performance in the facts of the case?

E. ANALYSIS

43. Order I Rule 10 *inter alia* empowers the court to allow addition, substitution or deletion of a party to a suit at any stage of the proceedings. It reads as follows:

> *"**10. Suit in name of wrong plaintiff.—***
> *(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.*
> *(2) Court may strike out or add parties.—*
> *The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.*
> *(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.*
> *(4) Where defendant added, plaint to be amended.—*
> *Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant*
> *(5) Subject to the provisions of the 1 [Indian Limitation Act, 1877 (XV of 1877)], section 22, the proceedings as against any person*

added as defendant shall be deemed to have begun only on the service of the summons."

44. For the purpose of answering the pivotal question at hand, we only need to refer to Sub-rules (2) of Order I Rule 10. A bare reading of the provision extracted above indicates that Sub-rule (2) vests a very broad and substantial power in the court to delete or add a party, at any stage of the suit proceedings, either *suo motu* or upon an application of either of the parties before it. It provides that the court may delete the name of a party on such terms as may appear to the court to be just and proper. It may add any party whose presence before the court is necessary for the effective and complete adjudication and settlement of all the questions involved in the suit.

45. The power to strike out or add parties under Sub-rule (2) can be exercised by the court on an application made by the parties before it, or upon an application by a third party who desires to be added as a party, or even *suo motu*. Explaining the object underlying Order I Rule 10, this Court in ***Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay*** reported in **(1992) 2 SCC 524** observed thus:

"6. Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a

necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

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8. The case really turns on the true construction of the rule in particular the meaning of the words "whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit". The Court is empowered to join a person whose presence is necessary for the prescribed purpose and cannot under the rule direct the addition of a person whose presence is not necessary for that purpose. If the intervener has a cause of action against the plaintiff relating to the subject matter of the existing action, the Court has power to join the intervener so as to give effect to the primary object of the order which is to avoid multiplicity of actions.

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10. The power of the Court to add parties under Order 1 Rule 10, CPC, came up for consideration before this Court in Razia Begum [1959 SCR 1111 : AIR 1958 SC 886]. In that case it was pointed out that the courts in India have not treated the matter of addition of parties as raising any question of the initial jurisdiction of the Court and that it is firmly established as a result of judicial decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject matter of the litigation whether it be the questions relating to movable or immovable property.

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14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one

whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is by curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object is to prosecute his own cause of action. Similar provision was considered in Amon v. Raphael Tuck & Sons Ltd. [(1956) 1 All ER 273 : (1956) 1 QB 357], wherein after quoting the observations of Wynn-Parry, J. in Dollfus Mieg et Compagnie S.A. v. Bank of England [(1950) 2 All ER 605, 611], that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated:

> *"The test is 'May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights'."*"

(Emphasis supplied)

46. In the present case, the appellant, along with other legal heirs of the original defendant came to be impleaded in the execution proceedings before the Trial Court as the original defendant passed away during the pendency of the execution proceedings. Impleadment of the legal heirs of a defendant

who passes away during the pendency of suit proceedings is governed by Order XXII Rule 4. The same reads as under:

> *"**4. Procedure in case of death of one of several defentlants or of sole defendant.—***
> *(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendants to be made a party and shall proceed with the suit.*
> *(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.*
> *(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.*
> *(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.*
> *(5) Where—*
>
> > *(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the Limitation Act, 1963 (36 of 1963), and the suit has, in consequence, abated, and*
> > *(b) the plaintiff applies after the expiry of the period specified therefore in the Limitation Act, 1963 (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance,*

sufficient cause for not making the application with the period specified in the said Act,

the Court shall, in considering the application under the said section 5, have due regard to the fact of such ignorance, if proved."

47. It is important to note the Sub-rule (2) of the Rule (4) as extracted above. The said Sub-rule provides that any party which is sought to be impleaded as a legal heir of a deceased defendant is at liberty to take up any defence as regards his character as the legal representative of the deceased defendant.

48. Rule 5 of Order XXII is of importance in the facts of this litigation. It reads thus:

*"**5. Determination of question as to legal representative.—** Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court: Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question."*

49. A perusal of the extracted provision indicates that if a question arises as regards whether any person is or is not the legal representative of a deceased defendant then such a question shall be determined by the court.

50. As we have discussed in the preceding parts of this judgment, the Trial Court, while dismissing the application moved by the appellant under Order

I Rule 10, observed in clear terms that the appellant had the opportunity of contesting his impleadment as the legal heir of the original defendant when the application for impleadment and amendment of plaint was moved by the original plaintiff. The Trial Court has also noted that the appellant was not only served with the notice of the impleadment application, but he also entered appearance. However, the appellant, for reasons best known to him, chose to remain silent for more than four years and did not raise any objections as regards his status of not being a legal heir of the original defendant.

51. The position of law is well settled that the power to strike out or add a party to the proceedings under Order I Rule 10 can be exercised by the court at any stage of the proceeding. However, the same cannot be construed to mean that when a particular party has been impleaded as a legal heir under Order XXII Rule 4 after due inquiry by the court and without any objections, the party can approach the court anytime later and seek his deletion from the array of parties by filing an application under Order I Rule 10. If at all the appellant was aggrieved by his impleadment as a legal heir, the suitable course of action was to first object to his impleadment under Sub-rule (2) of Order XXII Rule 4. Even then if the Trial Court would have decided against the appellant, it would have been open to him to approach the High Court

by filing a revision application against the order of impleadment. However, the appellant chose to sit tight in the impleadment proceedings despite entering appearance. He was also a respondent in the application preferred by some of the legal heirs under Section 28 of the SRA seeking rescission of the contract, both before the Trial Court and later before the High Court in the revision preferred against the rejection of the said application. However, he chose not to raise any objection in either of these proceedings as well.

52. The timing of the application preferred by the appellant also raises serious doubts as regards his *bona fides*. While the appellant remained silent over his objections as regards tenancy and impleadment as legal heir from 2008 till the rejection of the revision preferred by some of the legal heirs against the rejection of the application for rescission of the contract, he filed the application under Order I Rule 10 for the deletion of his name from the array of parties within a month of the said revision petition. This, when seen in the context of the delays caused by multiple applications preferred by the appellant and the other legal heirs of the original defendant, only goes on to lend credence to the allegation of the original plaintiff that the application for deletion from array of parties is merely one more attempt to further thwart and prolong what has already been an unduly protracted litigation for

the original plaintiff. Furthermore, while the appellant raised no objection to the application for rescinding the contract either before the Trial Court or the High Court despite being a respondent in both the proceedings, it has been submitted by the counsel appearing on his behalf that the said proceedings were not being undertaken with the approval of the appellant. It is not possible for us to accept such a contention at this stage of the proceedings having regard to the conduct exhibited by the appellant.

53. The High Court, in its impugned order, held the application of the appellant under Order I Rule 10 to be barred by *res judicata* and thus not maintainable on that ground. We find no infirmity in the said observation mad by the High Court. This Court in ***Bhanu Kumar Jain v. Archana Kumar*** reported in **(2005) 1 SCC 787** observed that the principles of *res judicata* apply not only to two different proceedings but also to different stages of the same proceeding as well. The relevant observations are reproduced hereinbelow:

> *"18. It is now well settled that principles of res judicata apply in different stages of the same proceedings. (See Satyadhyan Ghosal v. Deorajin Debi [AIR 1960 SC 941 : (1960) 3 SCR 590] and Prahlad Singh v. Col. Sukhdev Singh [(1987) 1 SCC 727] .)*
>
> *19. In Y.B. Patil [(1976) 4 SCC 66] it was held: (SCC p. 68, para 4)*
>
> > *"4. ... It is well settled that principles of res judicata can be invoked not only in separate subsequent proceedings, they also get attracted in subsequent stage of the same*

> *proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding."*
>
> *xxx xxx xxx*
>
> *21. Yet again in Hope Plantations Ltd. [(1999) 5 SCC 590] this Court laid down the law in the following terms: (SCC p. 604, para 17)*
>
> *"17. ... One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice over, because such a process would be contrary to considerations of fair play and justice."""*
>
> (Emphasis supplied)

54. Thus, as the dictum of the law as extracted aforesaid indicates, the only manner in which a decision arrived at by a court of competent jurisdiction can be interfered with is by modification or reversal by the appellate authorities. In the present case, the order for impleadment of the appellant as a legal heir was made by the Trial Court after due inquiry under Order XXII, as also observed by the Trial Court in its order rejecting the application under Order I Rule 10. Evidently, neither any objection was raised by the appellant before the Trial Court nor any revision was preferred subsequently against the said order. Thus, it could be said that the issue as regards the impleadment of the appellant as a legal heir of the original defendant had attained finality between the parties and thus the subsequent

application under Order I Rule 10 seeking to get his name deleted from the array of parties could be said to be barred by *res judicata*. Undoubtedly, the expression "at any stage of the proceedings" used in Order I Rule 10 allows the court to exercise its power at any stage, however the same cannot be construed to mean that the defendant can keep reagitating the same objection at different stages of the same proceeding, when the issue has been determined conclusively at a previous stage. Allowing the same would run contrary to the considerations of fair play and justice and would amount to keeping the parties in a state of limbo as regards the adjudication of the disputes.

55. This Court in the case of ***Satyadhyan Ghosal v. Deorajin Debi*** reported in **[1960] 3 SCR 590**, has noted that the principle of *res judicata* is essential in giving a finality to judicial decisions. The relevant observations are reproduced hereinbelow:

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

principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct. The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. ..."

(Emphasis supplied)

56. This Court in ***S. Ramachandra Rao v. S. Nagabhushana Rao*** reported in **2022 SCC OnLine SC 1460** observed that although a decision may be erroneous, yet it would bind the parties to the same litigation and concerning the same issue, if it is rendered by a court of competent jurisdiction. The observations read thus:

"31. For what has been noticed and discussed in the preceding paragraphs, it remains hardly a matter of doubt that the doctrine of res judicata is fundamental to every well regulated system of jurisprudence, for being founded on the consideration of public policy that a judicial decision must be accepted as correct and that no person should be vexed twice with the same kind of litigation. This doctrine of res judicata is attracted not only in separate subsequent proceedings but also at the subsequent stage of the same proceedings. Moreover, a binding decision cannot lightly be ignored and even an erroneous decision remains binding on the parties to the same litigation and concerning the same issue, if rendered by a Court of competent jurisdiction. Such a binding decision cannot be ignored even on the principle of per incuriam because that principle applies to the precedents and not to the doctrine of res judicata."

57. A five-Judge Bench of the Calcutta High Court in ***Tarini Charan Bhattacharya v. Kedar Nath Haldar*** reported in **1928 SCC OnLine Cal 172** considered the question as regards whether an erroneous decision on a point of law would operate as *res judicata* between the parties or not. The court *inter alia* observed that it is not always open to the party to raise a point of law. It further held that Section 11 of the CPC makes the decision of the court conclusive between the parties notwithstanding the reasoning employed by the court in arriving at the said decision. The relevant observations are as under:

> *"(1) The question whether a decision is correct or erroneous has no bearing upon the question Whether it operates or does not operate as res judicata. The doctrine is that in certain circumstances the Court shall not try a suit or issue but shall deal with the matter on the footing that it is a matter no longer open to contest by reason of a previous decision. In these circumstances it must necessarily be wrong for a Court to try the suit or issue, come to its own conclusion thereon, consider whether the previous decision is right and give effect to it or not according as it conceives the previous decision to be right or wrong. To say, as a result of such disorderly procedure, that the previous decision was wrong and that it was wrong on a point of law/or on a pure point of law, and that therefore it may be disregarded, is an indefensible form of reasoning. For this purpose, it is not true that a point of law is always open to a party.*
>
> *(2) In India, at all events, a party who takes a plea of res judicata has to show that the matter directly and substantially in issue has been directly and substantially in issue in the former suit and also that it has been heard and finally decided. This phrase*

"matter directly and substantially in issue" has to be given a sensible and businesslike meaning, particularly in view of Expl. 4 to sec. 11 of the Code of Civil Procedure which contains the expression "grounds of defence or attack." Sec. 11 of the Code says nothing about causes of action, a phrase which always requires careful handling. Nor does the section say anything about point or points of law, or pure points of law. As a rule parties do not join issue upon academic or abstract questions but upon matters of importance to themselves. The section requires that the doctrine be restricted to matters in issue and of these to matters which are directly as well as substantially in issue.

(3) Questions of law are of all kinds and cannot be dealt with as though they were all the same. Questions of procedure, questions affecting jurisdiction, questions of limitation, may all be questions of law. In such questions the rights, of parties are not the only matter for consideration. The Court and the public have an interest. When a plea of res judicata is raised with reference to such matters, it is at least a question whether special considerations do not apply.

(4) In any case in which it is found that the matter directly and substantially in issue has been directly and substantially in issue in the former suit and has been heard and finally decided by such Court, the principle of res judicata is not to be ignored merely on the ground that the reasoning, whether in law or otherwise, of the previous decision can be attacked on a particular point. On the other hand it is plain from the terms of sec. 11 of the Code that what is made conclusive between the parties is the decision of the Court and that the reasoning of the Court is not necessarily the same thing as its decision. The object of the doctrine of res judicata is not to fasten upon parties special principles of law as applicable to them inter se, but to ascertain their rights and the facts upon which these rights directly and substantially depend; and to prevent this ascertainment from becoming nugatory by precluding the parties from re-opening or recontesting that which has been finally decided."

(Emphasis supplied)

58. We are aware of the decision of this Court in ***Pankajbhai Rameshbhai Zalavadiya v. Jethabhai Kalabhai Zalavadiya*** reported in **(2017) 9 SCC 700** wherein it was held that an application under Order I Rule 10 would not be liable to be rejected solely on the ground that an application under Order XXII Rule 4 had been found to not be maintainable. However, the facts before us are quite different from the facts before the Court in ***Jethabhai*** *(supra)*. Therein, the subsequent application under Order I Rule 10 was allowed on the ground that the initial application under Order XXII Rule 4 was filed under a mistake of law and fact as the defendant had passed away prior to the institution of the suit, whereas order XXII Rule 4 only contemplates a situation wherein the defendant passes away during the pendency of the proceedings. Thus, in such a scenario, it was observed that the appropriate application would be under Order I Rule 10. However, in the present case, the appropriate remedy for the appellant lay in raising an objection under Sub-rule (2) of Rule (4) of Order XXII at the time of the impleadment and not under Order I Rule 10 four years after the impleadment came to be allowed.

59. In lieu of the aforesaid discussion, although it is immaterial for us to examine the contention of the appellant that Mohammedan law does not accord the son of a predeceased son the status of a legal heir of the

grandfather by virtue of inapplicability of the doctrine of representation, yet we may refer to the observations of the Privy Council in the case of ***Moolla Cassim bin Moolla Ahmed v. Moolla Abdul Rahim*** reported in **1905 SCC OnLine PC 17** wherein it was observed thus:

> *"It is a well-known principle of Mahomedan law that if any of the children of a man die before the opening of the succession to his estate, leaving children behind, these grandchildren are entirely excluded from the inheritance by their uncles and aunts. […]"*

60. Thus, had the appellant taken up the objection at the right stage of the proceedings, it would have been open to the court to look into the said objection under Order XXII Rule 5 and disallow his impleadment as a legal heir of the original defendant. However, having failed to act at the appropriate stage, it was not open to the appellant to subsequently approach the court with an application under Order I Rule 10. Further, as we shall shortly discuss, the appellant having failed to raise the plea of his tenancy and possession over the suit property, the rejection of his application under Order I Rule 10 has no material effect on the ultimate outcome of the *lis*.

61. The appellant also contended before the Trial Court as well as the High Court that he is a tenant in the suit property by virtue of having inherited the tenancy from his deceased father in 1992. Thus, he enjoys the protection of

Section 11 of the Kerala Buildings (Lease and Rent Control) Act, 1965 which provides that a tenant cannot be evicted, even in execution of a decree, except in accordance with the procedure prescribed under the said Act. However, the said contention of the appellant was rejected by both the courts and in our opinion, rightly so.

62. The appellant has relied on the assignment deed of the year 1976 and the License No. 215/92-93 issued by the Palakkad Municipality under Section 204 of the Kerala Municipality Act, 1960 to contend that his deceased father was a tenant in the suit property prior to his demise in 1992. He has also relied upon the Municipality License No. PH2-27607/11 issued in his name on 16.04.2011 to contend that he enjoys the exclusive possession of the suit property owing to the tenancy. However, we are of the view that the same is merely one more weapon from the arsenal of dubious tactics employed by the appellant in collusion with the other legal heirs of the original defendant to protract the execution proceedings.

63. While it may be true that the deceased father of the appellant was a tenant in the suit property at the time the same was purchased by the original defendant in the year 1976 and that he continued as a tenant till his demise

in 1992, however we are of the view that the appellant has failed to establish his tenancy or possession over the suit property for the following reasons:

a. The appellant is one of the witnesses to the agreement to sell entered into between the original plaintiff and the original defendant in the year 1996.

b. There is no clause or recital as regards the tenancy of the appellant in the agreement to sell unlike the assignment deed of the year 1976.

c. The appellant did not raise any objection in any of the proceedings on the ground of tenancy until the application filed by him in 2012 from which the present proceedings arise.

d. The appellant has failed to produce any documents indicating his tenancy or exclusive possession over the suit property from the time of the execution of the agreement to sell upto the filing of the execution application by the original plaintiff.

e. The Municipality license of 2011 has been issued long after the suit was decreed in the favor of the original plaintiff and during the pendency of the execution proceedings.

f. Both the courts below have recorded concurrent findings rejecting the claim of tenancy and exclusive possession over the suit property by the appellant.

64. Before we part with the matter, we deem it appropriate to briefly address the contention of the appellant that in the absence of decree granting possession to the original plaintiff, the decree gets satisfied with the execution of the sale deed and the original plaintiff is not entitled to seek possession over the suit property. The position of law is settled on this aspect and has been reiterated by us in our recent decision in ***Rohit Kochhar v. Vipul Infrastructure Developers Ltd.*** reported in **2024 SCC OnLine SC 3584**. In the said decision, relying on the decision of this Court in ***Babu Lal v. Hazari Lal Kishori Lal*** reported in **(1982) 3 SCR 94**, it was observed thus:

> *"23. This Court in Babu Lal (supra), upon a combined reading of Sections 22 and 28(3) of the Specific Relief Act respectively and Section 55 of the Transfer of Property Act, observed that the it was only "in an appropriate case" that the plaintiff was required to separately seek the relief of possession, partition, or separate possession, as the case may be, along with the relief of specific performance. The Court observed that in other cases, say for example a case where the exclusive possession of the suit property is with the contracting party, a decree for specific performance of the contract of sale simpliciter, without specifically providing for delivery of possession, may give complete relief to the decree-holder. This, the Court observed,*

was the mandate flowing from Section 55 of the Transfer of Property Act. […]"

(Emphasis supplied)

65. Thus, as in the present case, both the courts below have arrived at the conclusion that the exclusive possession of the suit property could be said to be with the original defendant when the suit was decreed, the relief of transfer of possession is implicit in the decree for specific performance directing the original defendant to execute a sale deed in the favour of the original plaintiff. For the same reason, the decision of this Court in ***Birma Devi*** *(supra)* is of no avail to the appellant.

66. It has been brought to our knowledge that during the pendency of the present petition, a sale deed has already been executed in the favour of the original plaintiff by the legal heirs of the original defendant, however the possession has not yet been granted.

F. CONCLUSION

67. In light of the aforesaid discussion, we are of the view that the High Court, as well as the Trial Court, committed no error, much less any error of law, in arriving at their respective decisions. As a result, the appeal fails and is, hereby, dismissed with costs of Rs 25,000/- to be paid by the appellant and

deposited with the Legal Services Authority within a period of two weeks from today.

68. The sale deed having already been executed in favour of the respondent no. 1, the Executing Court shall now proceed to ensure that vacant and peaceful possession of the suit property is handed over to the respondent no.1 in his capacity as the decree holder as well as the title holder of the suit property and, if necessary, with the aid of police. This exercise shall be completed within a period of two months from today without fail.

69. Pending application(s), if any, shall also stand disposed of.

……..J.

(J.B. Pardiwala)

New Delhi; **……..J.**

May 23rd, 2025 **(R. Mahadevan)**