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suspension and the subsistence allowance payable during suspension are part of a larger contract which must be enforced as a whole and not in part. And lastly if there is in fact any conflict between the Establishment Code and the Payment of Wages Act, it is the Code which must prevail.

Both parts of the question referred to the Full Bench, therefore, must be answered in the negative.

Passey, J.

Passey, J.—I concur.

Mehar Singh, J.

Mehar Singh, J.—I agree.

APPELLATE CIVIL

Before Tek Chand, J.

UMRAO SINGH,—*Plaintiff-Appellant*

versus

MST. MUNNI AND OTHERS,—*Respondents*

Civil Regular Second Appeal No. 835 of 1955.

1957

Jan., 21st

Resjudicata—Two suits tried together—Suits disposed of by a single judgment but separate decrees prepared—Appeal preferred against one decree only—Whether the unappealed decree operates as resjudicata qua the appealed decree—Rule stated.

Held, that where two suits have been tried together and though disposed of by a single judgment two decrees are prepared and an appeal is preferred against one decree only, the fact that there is an unappealed decree does not create an estoppel against the hearing of the appeal. In such a case the estoppel is not created by the decree but by the judgment and it would be a denial of justice to stifle the hearing of the appeal by resort to the doctrine of *res judicata* when actually and substantially

there was a single trial and a single verdict though clothed in two decrees.

Held further, that in order to apply the rule of *res judicata* the issue should be once fairly and finally tried in a former litigation, which was independent of the proceedings in which the same matter was again in dispute. The essence of the rule was that the two proceedings should be so independent of each other that the trial of the one could not be confused with the trial of the other. Where two suits having a common issue were, by consent of the parties or by order of the Court, tried together, the evidence being written in one record, and both the suits having been disposed of by a single judgment, it could not be said that there had been two distinct and independent trials. When there has been one finding and one judgment the hearing of the appeal cannot be barred merely because no appeal had been filed in the connected suit which was also disposed of by the same judgment. In such a case not only in substance but also in form there had been one trial and one decision.

Mussammat Lachhmi v. *Mussammat Bhulli* (1), and *Narhari and others* v. *Shankar and others* (2), followed. *Zaharia* v. *Debia and others* (3), *Sulaiman* v. *Partap and others* (4), *Mohammad Mohtashim* v. *Joti Prasad* (5), *Mt. Zohra* v. *Raza Khan and others* (6), *Ghansham Singh* v. *Bhola Singh* (7), *Muhammad Ja* v. *Duli Chand and another* (8), *Bhan Singh* v. *Gokal Chand* (9), *Muhammad Din and others* v. *Mst. Zeb-u-Nissa* (10), discussed.

Second Appeal from the decree of Shri Parshotam Sarup, Senior Sub-Judge, Rohtak, dated the 25th day of August, 1955, by which the suit of Umrao Singh, plaintiff for possession of the land on payment of Rs. 7,500 by 19th February, 1955, was decreed, failing which his suit was to stand dismissed with costs and in the alternative right of pre-emption was held exerciseable by Mst. Munni by order

(1) I.L.R. 8 Lah. 384.
(2) (1950) 1 S.C.R. 754.
(3) I.L.R. 33 All. 51.
(4) A.I.R. 1927 Lah. 98.
(5) A.I.R. 1941 All. 277.
(6) A.I.R. 1945 Peshawar 35.
(7) A.I.R. 1923 All. 390(2).
(8) A.I.R. 1921 Lah. 255.
(9) I.L.R. 1 Lah. 83.
(10) I.L.R. 3 Lah. 315.

of the Sub-Judge 1st Class, Jhajjar, dated 19th November, 1954, was set aside and the suit of Mst. Munni was decreed with costs subject to the payment of Rs. 7,500 pre-emption money less the money already deposited in court, to the vendees on or before 15th October, 1955, failing which her suit was to stand dismissed with costs, and in the alternative Umrao Singh was held entitled to exercise his right of pre-emption in the suit land on payment of Rs. 7,500 by 1st November, 1955, failing which his suit was to stand dismissed with costs.

It was further ordered that Umrao Singh was to pay the costs of the 1st appellate court.

J. N. SETH, for Appellants.

D. N. AGGARWAL, for Respondents.

JUDGMENT

Tek Chand, J. TEK CHAND, J.—This is a regular second appeal against the decree and judgment of the Senior Sub-Judge, Rohtak, allowing the appeal of one Shrimati Munni respondent and setting aside the decree passed by the Subordinate Judge 1st Class, Jhajjar, in favour of Umrao Singh. This appeal arises out of a contest between two competing pre-emptors. The facts of this case so far as they are relevant for purposes of this appeal are that on 21st of August, 1953, one Manohar Lal Mahajan of Jhajjar for himself and as attorney of his brothers, defendants Nos. 8 to 11, had sold the land by a registered sale-deed for Rs. 7,500. This gave rise to two pre-emption suits. Umrao Singh plaintiff-appellant instituted a suit, No. 222 of 1954, on 7th of June, 1954, for possession of the property in suit by pre-emption on the ground that he was a co-sharer in the *khata* in which the land in suit was situated. Besides the vendors and the vendees, one Shrimati Munni, the contesting respondent before me, was also impleaded as defendant No. 12. This lady is the mother of the

vendors. The second suit, No. 270 of 1954, was brought by Shrimati Munni as the rival pre-emptor claiming possession by way of pre-emption under section 15(b) *thirdly,* of the Punjab Pre-emption Act as the heir of the vendors. She also asserted her right of pre-emption on the ground that she was a *biswedar.* The following issues were framed:—

1. Whether the plaintiffs or the rival pre-emptor have a preferable right of pre-emption *qua* the vendees ?

2. If issue No. 1 is proved, whether the plaintiffs or the rival pre-emptor have a preferential right of pre-emption, *inter se* ?

3. Whether the sale price of Rs. 7,500 was paid or fixed in good faith ?

4. If issue No. 3 is not proved what is the market value of the property in suit ?

5. Relief ?

The trial Court by its order dated 8th October, 1954, consolidated the two suits which were disposed of by one judgment but two decrees were passed in them. In Civil Suit No. 222 of 1954 in which Umrao Singh was the plaintiff the trial Court passed a decree for possession by pre-emption of the land in suit in his favour against the defendants on payment of Rs. 7,500 by 19th February, 1955. In case of default in payment of the above amount by the due date the plaintiff's suit was to stand dismissed with costs. The amount was paid by due date and all the terms of the decree were complied with in terms of Order 20 Rule 14 of the Code of Civil Procedure. Suit No. 270 of 1954, instituted by Shrimati Munni,

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was also decreed but it was provided that that decree would not take effect until Umrao Singh the rival pre-emptor failed to exercise his right of pre-emption under the decree passed in his favour in the previously instituted suit. Shrimati Munni did not file any appeal from the decree passed in suit No. 222 of 1954 in favour of Umrao Singh, but she presented an appeal from the decree passed in suit No. 270 of 1954 which had been instituted by her. Her contention was that her right to pre-empt the sale was preferential as compared to the right of Umrao Singh, the rival pre-emptor. She asserted her right of pre-emption in respect of the property in question under section 15(b) *thirdly*, and Umrao Singh claimed his right of pre-emption under section 15(b), *fourthly*, as a co-sharer. The dispute requiring decision on merits was in regard to the second issue. The lower appellate Court on issue No. 2 held that Shrimati Munni as the mother of the vendors was an heir under the Hindu Law by which the parties were governed and as such she was held to have a preferential right to pre-empt as against Umrao Singh who merely claimed as a co-sharer.

A preliminary objection was taken before the lower appellate Court by Umrao Singh. He contended that as there were two separate decrees in respect of the land in suit, one in his favour, and another in favour of Shrimati Munni, she should have filed two separate appeals against two separate decrees notwithstanding that there was one judgment disposing of both the suits. On account of her failure to appeal from the decree obtained by Umrao Singh in case No. 222 of 1954, that decree became final and Shrimati Munni was barred by the rule of *res judicata* from presenting the appeal. This contention

failed to carry conviction with the lower appellate Court, but in view of its finding on the second issue the decision of the trial Court was reversed and the appeal of Shrimati Munni was allowed. A decree was, therefore, passed with costs for possession by pre-emption of the land in suit in favour of Shrimati Munni against the defendant-respondents on payment of Rs. 7,500 for payment to the vendees on the condition that she should deposit the pre-emption money less the money already deposited in Court on or before the 15th of October, 1955. In case she defaulted in making the payment of the pre-emption money within the time allowed to her, her suit would stand dismissed with costs, and Umrao Singh, the rival pre-emptor, would be entitled to a decree for possession by pre-emption of the land in suit against the defendant-respondents on payment of the like amount to the vendees. The date before which Umrao Singh had to pay the money was 1st of November, 1955.

Against the above decree of the Senior Subordinate Judge, Rohtak, Umrao Singh has come up in appeal to this Court. His learned counsel Mr. Jagan Nath Seth conceded that as mother, Shrimati Munni had a better right to pre-empt. The only argument that has been addressed to me on behalf of the plaintiff-appellant rests upon the doctrine of *res judicata*. Mr. Jagan Nath Seth after drawing my attention to the provisions of Order 20 Rule 14, Code of Civil Procedure, contends that his client having paid the purchase money as required by the decree, the title of the land in suit accrued in favour of his client Umrao Singh. He contends that as no appeal had been filed by Shrimati Munni against the decree passed in Suit No. 222 of 1954, in favour of Umrao Singh that decree had become final and could not be set aside in appeal from the decree passed in Civil Suit No. 270 of 1954.

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In support of his contention, Mr. Jagan Nath Seth has relied upon *Zaharia* v. *Debia and others* (1), a Full Bench decision of Allahabad High Court. The facts of that case were very similar. There, two suits were instituted in the Court of the Munsif of Ghaziabad for pre-emption with respect to the property which was the subject matter of sale. The first suit was brought by Manphul and the other by Zaharia, each party claiming preferential right of pre-emption as against the other. The two suits were tried together and by one judgment, suit of Manphul was decreed and that of Zaharia dismissed. Zaharia appealed from the decree passed in the suit which had been instituted by him but no appeal was filed from the suit which had been brought by Manphul. Before the District Judge a preliminary objection was taken that as the decree in the connected suit had not been appealed against it had become final and it operated as *res judicata* in the appeal before him. The District Judge upheld the objection and dismissed the appellant's suit. The plaintiff Zaharia then filed an appeal which was disposed of by the High Court. It was held that the doctrine of *res judicata* applied, and Zaharia's appeal was, therefore, barred. It was held that two or more decrees could not be challenged by one appeal and there should be two or more appeals against two or more decrees. The appeal was dismissed with costs. In *Sulaiman* v. *Partap and others* (2), Addison, J. was of the same view. In that case also there were two suits filed by two rival pre-emptors for possession of a house which had been sold. Suit of one pre-emptor was dismissed while that of the other was decreed. As in this case, the two pre-emptors were also impleaded in each other's suits which were decided on the same

(1) I.L.R. 33 All. 51.
(2) A.I.R. 1927 Lah. 98.

day. Sulaiman filed only one appeal which was against the decision of the suit in which he was the plaintiff. Addison, J. held that as the decree in the suit of the rival pre-emptor had not been appealed against, it had become final and thus was prior in point of time to the suit of Sulaiman which being under appeal was not finally decided and, therefore, the appeal was barred by the principle of *res judicata*. Mr. Jagan Nath Seth in support of the above view also cited *Mohammad Mohtashim* v. *Joti Prasad* (1), *Mt. Zohra* v. *Raza Khan and others* (2), *Ghansham Singh* v. *Bhola Singh* (3), *Muhammad Ja* v. *Duli Chand and another* (4), *Bhan Singh* v. *Gokal Chand* (5), and *Muhammad Din and others* v. *Mst. Zeb-un-Nissa* (6).

Mr. D. N. Aggarwal has cited *Mussammat Lachhmi* v. *Mussamat Bhulli* (7), a Full Bench decision of Lahore High Court. In that case two widows Mst. Lachhmi and Mst. Bhulli were jointly in possession of certain land. Each sued the other for a declaration that she was the exclusive owner of the land and that the defendant had no right in it of any kind. The two suits were tried together and were disposed of by a single judgment. The decision in the judgment disposing of the two suits was that in Mst. Bhulli's suit she was granted a declaration that she was the owner of half share belonging to her husband Deva Singh as the latter's heir and the other half share was to remain with Mst. Lachhmi, the other widow of Deva Singh in lieu of maintenance. In Mst. Lachhmi's suit,

(1) A.I.R. 1941 All. 277.
(2) A.I.R. 1945 Peshawar 35.
(3) A.I.R. 1923 All. 390(2).
(4) A.I.R. 1921 Lah. 255.
(5) I.L.R. 1 Lah. 83.
(6) I.L.R. 3 Lah. 315.
(7) I.L.R 8 Lah. 384.

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Mst. Lachhmi was granted a declaration that she was in possession and would remain in possession of half share of Deva Singh in lieu of maintenance only. A separate decree having been drawn up in each case, Mst. Bhulli appealed to the High Court against one of the two decrees only, namely, the decree given in the suit in which she was the plaintiff. At the hearing of the appeal, a preliminary objection was raised on behalf of the respondent that the appeal could not proceed by reason of Mst. Bhulli's failure to appeal from the decree that had been passed against her in Mst. Lachhmi's suit.

Four out of the five Judges constituting the Full Bench held that there was no force in the preliminary objection, as no bar to appeal proceeding was created either by the provisions of section 11 of the Code of Civil Procedure or by the general principles of *res judicata*. Dalip Singh J., who wrote the dissenting judgment, was, however, of the view that failure to appeal from the decree passed against her in Mst. Lachhmi's suit created estoppel by record and therefore the hearing of the appeal was barred by *res judicata*. My attention has been drawn by the learned counsel appearing before me to the relevant passages in the judgment of the Full Bench. Mr. Jagan Nath Seth has tried to distinguish the Full Bench case, though unsuccessfully, from the facts of this case. The contention of Mr. Jagan Nath Seth is that for passing a decree in pre-emption suit there are special provisions, and Order 20 Rule 14 of the Code lays down a specific manner in which a decree in such a suit has to be passed. He contended that the words occurring in Order 20 Rule 14(b), viz., "whose (pre-emptor's) title thereto shall be deemed to have accrued from the date of such payment. ....

....." were of special significance. He said that the Full Bench case was not a pre-emption case, whereas the authorities relied upon by him related to pre-emption suits. I see no force in this argument and there is no distinction in principle between pre-emption suits and other suits for purposes of determining the question of the applicability of the rule of *res judicata*. The case of *Zaharia* v. *Debia*, (1), was considered by their Lordships constituting the Full Bench and the principle upon which it was based did not find favour with them. Tek Chand, J., after having exhaustively reviewed the entire case-law and after having examined the doctrine of *res judicata* by reference to its original source in India as well as in other countries, held that the principle of *res judicata* would not apply to such a case. In order to apply the rule of *res judicata* the issue should be once fairly and finally tried in a former litigation, which was independent of the proceedings in which the same matter was again in dispute. The essence of the rule was that the two proceedings should be so independent of each other that the trial of the one could not be confused with the trial of the other. Where two suits having a common issue were, by consent of the parties or by order of the Court, tried together, the evidence being written in one record, and both the suits having been disposed of by a single judgment, it could not be said that there had been two distinct and independent trials. When there has been one finding and one judgment the hearing of the appeal cannot be barred merely because no appeal had been filed in the connected suit which was also disposed of by the same judgment. In such a case not only in substance but also in form there had been one trial and one decision.

(1) I.L.R. 33 All. 51.

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The argument which has been advanced before me by the learned counsel of the appellant was also considered by the Full Bench but was rejected. Tek Chand, J., at pages 404 and 405 observed as under: —

> "Another point remains to be noticed, that though the two suits were tried together and may be taken to have been disposed of by one judgment, yet two *decrees* were actually passed, one in each suit, and as only one such decree has been appealed against the other remains outstanding and has become final. It is suggested that if the appeal is allowed to proceed and is successful an anomalous and embarrassing situation of having two inconsistent and contradictory decrees on the record of the Court might be created. This argument which, at first sight, appears to be unanswerable, is the basis of the leading Allahabad case reported as *Zaharia* v. *Debia* (1). It also found favour with my learned brother Addison in *Sulaiman* v. *Partap* (2), and has the high authority of the great Calcutta Judge, Sir Asutosh Mookerjee, in support of it,—*vide Isup Ali* v. *Gour Chandra Deh* (3). I have, therefore, given much careful and anxious thought to it and it is with a great deal of hesitation and diffidence that I have found myself unable to accept it. It is necessary to emphasize here, what has been stated already, that *res judicata* is either estoppel by *verdict* or estoppel

(1) I.L.R. 33 All. 51.
(2) A.I.R. 1927 Lah. 98.
(3) 74 I.C. 591.

by *judgment* (or *record*) and apart from this there is no such thing as estoppel by 'decree'. As remarked by Casperz in paragraph 575 of his book on Estoppel, 'the decree itself is not the test of what is or is not *res judicata,* but the question in each case is what did the Court decide.' The determining factor is not the *decree* but the *decision* of the matter in controversy. In cases in which the property in dispute in two suits is different the matter is simple enough, for there the plea of *res judicata* can if at all, be sustained on the ground of a common issue having been decided before. The estoppel is created by *verdict* and as the two decrees relate to distinct properties no question of any embarrassment by contrariety of decrees arises. The matter is, however, not so easy when the subject matter of the two suits is identical."

Where two suits have been tried together and though disposed of by a single judgment two decrees are prepared and an appeal is preferred against one decree only, the fact that there is an unappealed decree does not create an estoppel against the hearing of the appeal. According to Tek Chand, J., (page 406) the estoppel in such a case would not be created by the decree. It could only be created by the judgment. In the circumstances of this case it would be a denial of justice to stifle the hearing of the appeal by resort to the doctrine of *res judicata* when actually and substantially there was a single trial and a single verdict though clothed in two decrees.

There is, however, no denying the fact that the rule of *res-judicata,* which is a principle of the

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conclusiveness of judgment, is firmly embedded in the juridical systems of most countries modern as well as ancient. The basis of this doctrine is stated by Black in his well known Book on Judgments Volume II, page 599 para 500 in the following words:—

> "That the solemn and deliberate sentence of the law, pronounced by its appointed organs upon a disputed fact or state of facts, should be regarded as a final and conclusive determination of the question litigated, and should for ever set the controversy at rest, is a rule common to all civilized systems of jurisprudence."

A final decision inter parties is accepted as irrefragable legal truth even if the result may be, that thereby an error is perpetuated. It is said that *res judicata* renders that which is straight crooked and makes white appear black. *Facit ex curvo rectum, ex albo nigrum,* but neverthless, a matter which has been adjudicated is received as true. *Res judicata pro veritate accipitur,* Dig. 1,5,25. According to the reasoning of the Roman Jurists the aim of the law in barring a subsequent suit which had been previously decided was to protect litigants from being harassed by successive suits, and to guard against the public evil which would arise in the shape of a general unsettlement and uncertainty of rights if judicial decisions were not conclusive. The rule "that one right of action should only be tried once is a reasonable rule to prevent interminable litigation and the embarrassment of contrary decisions". Dig. 44,2,6. It is a settled principle of law that a judgment shall not be contradicted by a judgment in a subsequent trial between the same parties where the same right is in question (except, of course, by the judgment of a court of appeal). In the words of

Roman Jurist Jullian which are equally true to-day, the plea of previous judgment is as a rule a bar whenever the same question of right is renewed between the same parties by whatever form of action. "*Et generaliter, ut Julianus definit exceptio rei judicatae obstat quotiens inter easdem personas eadem quaestio revocatur vel alio genere judicii, Dig.* 44,2,7,4. The plea of *res judicata* was a recognised defence to a subsequent suit between the same parties relating to the same subject matter known as *exceptio rei in judicium deducate* or simply *exceptio rei judicatae.*

While recognising the weight and the justice of the maxim that "no one shall be vexed twice over the same matter", the condition precedent to the applicability of the rule is that a cause must have been at one time fairly and finally tried in a proceeding separate and distinct from the dispute in which the issue is raised again. Tek Chand, J., in his judgment at page 399 in *Mst. Lachhmi* v. *Mst. Bhulli* (1), expressed himself as follows:—

> "The maxim is, as has been stated above, that 'no one shall be vexed *twice* over the same matter'. This, to my mind, presupposes that the issue has been *once* fairly and finally tried in a former litigation, which was independent of the proceedings in which the same matter is again in dispute. The essence of the rule seems to me to be that the two proceedings shall be so independent of each other that the trial of the one cannot be confused with the trial of the other. Where two suits, having a common issue, are, by consent of the parties or by order of the Court, tried together, the evidence being written in one record

(1) I.L.R. 8 Lah. 384.

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and both suits disposed of by a single judgment, can it be said that there have been two distinct and independent trials ? There being but one finding and one judgment, on what principle can the hearing of the appeal in which this finding and this judgment are under consideration be barred merely because no appeal has been filed in the connected suit which was disposed of by that very judgment ? There has been in substance as well in form but one trial and one verdict, and I venture to think, it will be a travesty of justice to stifle the hearing of the appeal against such a judgment on the ground that the findings contained in it operate as *res judicata.* In such a case there can be no "question of the successful party being 'vexed twice' over the same matter, nor does the hearing of the appeal in any way militate against any rule of public policy, which requires that there must be an end of litigation. There is not only nothing here to attract the principles underlying the rule of *res judicata,* but, on the other hand, it seems to me, that the acceptance of such a plea in such circumstances would strike at the very root of the basic conception of the doctrine which requires that a party must have at least *one* fair trial of the issue resulting in a decision by the Court of ultimate appeal as allowed by the law for the time being in force."

In *Narhari and others* v. *Shankar and others* (1), their Lordships of the Supreme Court, while

(1) (1950) I S.C.R. 754.

approving of the judgment of Tek Chand, J., in *Mst. Lachhmi* v. *Mst. Bhulli* (1), mentioned above, observed as under:—

> "The question of *res judicata* arises only when there are two suits. Even when there are two suits, it has been held that a decision given simultaneously cannot be a decision in the former suit. When there is only one suit, the question of *res judicata* does not arise at all and in the present case, both the decrees are in the same case and based on the same judgment, and the matter decided concerns the entire suit. As such, there is no question of the application of the principle of *res judicata*. The same judgment cannot remain effective just because it was appealed against with a different number or a copy of it was attached to a different appeal. The two decrees in substance are one."

Even in the Allahabad High Court the rule of law, as laid down in *Zaharia* v. *Debia* (2), has not been uniformly accepted as laying down the correct decision. In *Bijai Bahadur* v. *Parmeshwari Ram and others* (3), and *Ram Narain and others* v. *Nihal Singh and others* (4), the rule in *Zaharia* v. *Debia* (2), was departed from and the earlier ruling in *Ghansham Singh* v. *Bhola Singh* (5), was followed. Later in *Bijai Bahadur* v. *Parmeshwari Ram* (3) separate appeals preferred by two sets of defendants were allowed and the plaintiff filed only one second appeal against the appellate decree but impleaded both sets of defendants as respondents to the appeal. It was held that the

(1) I.L.R. 8 Lah. 384.
(2) I.L.R. 33 All. 51.
(3) (1923) 78 I.C. 1026.
(4) (1925) 87 I.C. 804.
(5) I.L.R. 45 All. 506.

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second appeal was maintainable and that the failure to prefer two separate appeals was only a technical defect which could be overlooked, especially in view of the fact that both sets of defendants had been impleaded as respondents.

It is, however, true that the rule of *res judicata* is a cardinal principle of the legal systems of most civilised countries and many eulogiums have been lavished upon this doctrine, said to be most salutary, but the Judges have not failed to issue a note of caution, whenever it has been considered necessary that the Court should be influenced by no technical consideration of form but by matters of substance within the limits allowed by law. It is worthwhile to reproduce what was said by Sir Lawrence Jenkins in delivering the judgment of the Board of Judicial Committee of the Privy Council in *Sheoparsan Singh and others* v. *Ramnandan Singh and others* (1), at pages 98 and 99:—

> "But in view of the arguments addressed to them their Lordships desire to emphasize that the rule of *res judicata*, while founded on ancient precedent, is dictated by a wisdom which is for all time. 'It hath been well said,' declared Lord Coke, '*interest reipublicae ut sit finis litium*, otherwise great oppression might be done under colour and pretence of law'; 6 Coke, 9a. Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu Commentators. Vijnanesvara and Nilakantha include the plea of a former judgment among those allowed by law, each

(1) 43 I.A. 91.

citing for this purpose the text of Katyayana, who describes the plea thus: 'If a person though defeated at law sues again he should be answered, 'You were defeated formerly.' This is called the plea of former judgment.' [*See* the Mitakshara (Vyavahara). bk.II. ch.i., edited by J. R. Gharpur, p. 14, and the Mayuka, ch.i., s. 1, p. 11 of Mandlik's edition.] And so the application of the rule by the Courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law.

The above passage was cited with approval by Mahajan, J. in *Shrimati Raj Lakshmi Dassi and others* v. *Banamli Sen and others* (1).

In view of the decision of the Full Bench in *Mst. Lachhmi* v. *Mst. Bhulli* (2), and of the Supreme Court in *Narhari and others* v. *Shankar and others* (3), I affirm the decision of the lower appellate Court. The result, therefore, is that the appeal of Umrao Singh fails and is dismissed. In the circumstances of the case there will be no order as to the costs of this Court.

CIVIL MISCELLANEOUS

Before Bhandari, C.J. and Khosla, J.

THE ASSOCIATED HOTELS OF *INDIA, LIMITED,* ETC.,—
Petitioners

versus

R. B. JODHA MAL KOTHALIA FOREST LESSEE,—
Respondent

Civil Miscellaneous No. 24-C of 1955.

1957

Jan., 22nd

Code of Civil Procedure (V of 1908)—Order XLV Rule 15—Indian Independence (Legal Proceedings) Order (Governor-General's Order No. 11 of 1947)—Clause 4(3)—

(1) A.I.R. 1953 S.C. 33, 38.
(2) I.L.R. 8 Lah. 384.
(3) (1950) 1 S.C.R. 754.