



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. OF 2026
(ARISING OUT OF SLP (C) NO.1052 OF 2025)**

SANJIV KUMAR ... APPELLANT(S)

VERSUS

**SHAKUNTLA DEVI AND
OTHERS ... RESPONDENT(S)**

J U D G M E N T

AUGUSTINE GEORGE MASI, J.

1. Leave granted.
2. The instant appeal assails the interim order dated 13.11.2024 (hereinafter referred as the “impugned order”) passed by the High Court of Punjab and Haryana at Chandigarh (hereinafter referred as the “High Court”), whereby it allowed the application CM No. 8414-C of 2024 in the Regular Second Appeal No. 1795 of 1990 filed by the Appellant (plaintiff) herein by recalling its

earlier order dated 13.08.2024 and proceeded to adjudicate upon the applications filed by the Respondent Nos. 3 and 4 (subsequent purchasers), i.e., (i) CM No. 13866-C of 2023 for condonation of delay of 2109 days under section 5 of the Limitation Act, 1963; (ii) CM No. 13867-C of 2023 for restoration of Regular Second Appeal under Order XLI Rule 19 of the Code of Civil Procedure, 1908 (hereinafter referred as the “CPC”); and (iii) CM No. 13868-C of 2023 and CM No. 13835-836-C of 2023 in XOBJS-20-C-1990 for impleadment in the main appeal as well as cross-objections under Order XXII Rule 10 of the CPC.

3. The primary grievance of the Appellant is that the High Court vide common impugned order dated 13.11.2024 allowed the aforementioned applications, thereby condoned the delay of 2109 days, restored the second appeal (originally preferred by Respondent Nos. 1 and 2, the so asserting prior owners of the suit property), and impleaded Respondent Nos. 3 and 4 as assignees of the Respondent No. 1 in

the main appeal as well as cross-objections who had purchased a part of the suit property.

4. At the outset, we note that the Appellant has inadvertently impugned order dated 13.11.2024 passed in application CM No.8414-C of 2024 which was filed by him for recall of an earlier order dated 13.08.2024 and the same was allowed by the High Court. However, during the Court hearing the Appellant clarified that he is aggrieved with the even date order passed in the applications filed by Respondent Nos.3 and 4 which were allowed by the High Court for impleadment as respondents being transferees on the basis of registered sale deeds in the cross-objections and appellants in the main appeal along with applications for condonation of delay and the application for restoration of the main appeal. Though, this appeal as it stands may not be sustainable, however, at the request of the counsel and in the interest of substantive justice, we proceed to examine the matter on merits.

5. Brief facts are that the original Plaintiff-Bhagwan Dai (now deceased) as well as Respondent No.1-Shakuntala Devi were both widows of Girdhari Lal. The suit property belonged to Girdhari Lal and after his death a suit was filed by original plaintiff Bhagwan Dai seeking decree of declaration to the effect that she is the exclusive owner of part of property bearing No.4677 measuring 22 x 22 ft. as well as store measuring 11 x 11 ft., which are in possession of the tenants. She further sought declaration that she is the owner and in possession of remaining part of the building bearing No.4677 and building bearing No.4674 to the extent of 1/2 share with Respondent No.1, being the owner of the remaining 1/2 share (hereinafter referred as “suit property”).
6. The trial court dismissed the suit holding that original plaintiff - Bhagwan Dai died on 29.12.1985 without leaving any legal representatives. It further held that the Appellant herein, Sanjiv Kumar, failed to prove that he was her adopted son. Conversely, the

Will dated 12.03.1982 executed by Girdhari Lal in favour of Respondent No. 2 (Varinder Kumar – son of Girdhari Lal & Respondent No. 1) was held to be proved.

7. On appeal, the First Appellate Court partly reversed the findings of the trial court and held that Appellant – Sanjiv Kumar is the validly adopted son of Bhagwan Dai. Further, the court recognized the ownership of the original plaintiff *qua* portion of property no. 4677 (shown as ‘C’ in the site plan) which was in possession of Budh Singh and Bihari Lal (tenants) as this property was in her possession even prior to execution of Will in lieu of maintenance and as such, she became the full owner of this property by virtue of provisions of Section 14(1) of the Hindu Succession Act, 1956. Further, restraint orders were passed against Respondent Nos. 1 and 2 (prior owners) from alienating this particular property only.
8. Aggrieved by the appellate court judgment, defendants – Respondent Nos. 1 and 2 preferred a second appeal before the High Court

challenging the findings of the First Appellate Court regarding validity of adoption of plaintiff-Appellant and ownership of the property no. 4677 which was under possession of tenants. In the second appeal, the plaintiff-Appellant filed cross-objections No. 20-C-1990 praying that the entire suit of the original-plaintiff Bhagwan Dai be decreed and the plaintiff-Appellant be declared owner. The appeal was instituted on 24.08.1990. Crucially, during the pendency of litigation, Respondent Nos. 3 and 4 Santosh Rani and Sh. Mohan Lal purchased property No. 4677/A from Respondent No. 1 (acting as the power of attorney holder for Respondent No. 2) via a registered sale deed dated 28.06.1990.

9. Thereafter, Respondent Nos. 3 and 4 (subsequent purchasers) moved an application bearing CM No.6306-C of 1999 for impleadment in the main appeal under Order I Rule 10 of the CPC. It is pertinent to mention that the subject matter of the main appeal was confined solely to Property No. 4677, over which the subsequent purchasers asserted no claim. Furthermore, for

reasons best known to them, the subsequent purchasers, omitted to prefer an impleadment application in the cross-objections filed by the Appellant - the very proceeding in which the property purchased by them was actually in dispute. The said impleadment application was dismissed by the High Court vide order dated 19.05.2000 holding that the applicants (subsequent purchasers) have purchased the property from prior owners in defiance of the order of the First Appellate Court vide which the prior owners were injuncted upon from alienating the property. In such circumstances, the assignee is not entitled to be impleaded as proper party because of the principle of *lis pendens*.

10. It so happened that on 02.02.2018, both the main appeal as well as cross-objections were dismissed for non-prosecution. While the Appellant successfully sought restoration of the cross-objections on 19.07.2019, no such effort was made by the prior owners despite requests made by the subsequent purchasers to restore

the main appeal. This prompted the subsequent purchasers to move fresh applications, alleging collusion between the prior owners and the Appellant, and asserting that as assignees, their interest in the *lis* was being jeopardised.

11. The High Court vide order dated 13.08.2024, directed that the applications shall be heard together with main appeal and cross-objections.
12. Another application i.e., CM No.8414-C of 2024 was subsequently filed by the Appellant seeking to recall the earlier order dated 13.08.2024 of the High Court seeking earlier applications filed by the subsequent purchasers be heard prior to the hearing of the main appeal.
13. Vide impugned interim order dated 13.11.2024, the application CM No.8414-C of 2024 was allowed and earlier filed applications were heard the same day.
14. The High Court observed in this order that the findings recorded by the court in earlier order dated 19.05.2000 in application under Order I

Rule 10 of the CPC that the subsequent purchasers have purchased property from prior owners in defiance of the order of the Civil Court, vide which the prior owners were enjoined upon not to alienate the property, is factually incorrect, as also, admitted by the Appellant as there was no injunction qua transfer of the shop purchased by the subsequent purchasers. The injunction order was passed only with respect to property no. 4677 (shown as 'C' in the site plan) which was in possession of Budh Singh and Bihari Lal (tenants) while the property sold to Respondent Nos. 3 & 4 was property No. 4677/A, which is different from that of enjoined property.

15. The Court further held that there is no dispute that the sale is hit by doctrine of *lis pendens* but, bare perusal of order dated 19.05.2000 would reveal that same was passed under misconception with respect to the factual situation. The High Court explicitly rejected the contention of the Respondents that fraud was played upon the Court.

16. Consequently, the High Court held that though the doctrine of *res judicata* is applicable so far as the interlocutory applications are concerned, however, where an erroneous decision is taken, the same does not operate as *res judicata*. Reliance was placed upon decision of this court in the case of **Allahabad Development Authority v. Nasiruzzaman and Others**¹.
17. The High Court not only directed the impleadment of subsequent purchasers in the main appeal and cross-objections as assignees of prior owners by placing reliance upon **Thomson Press (India) Limited v. Nanak Builders and Investors Private Limited and Others**² but also restored the main appeal to its original number after condoning the delay.
18. Aggrieved by the order of condonation of delay by the High Court, restoration of the main appeal and impleadment of Respondent Nos. 3 and 4 in the main appeal as well as cross-

¹ (1996) 6 SCC 424

² (2013) 5 SCC 397

objections, the Appellant has approached this Court contending that earlier order dated 19.05.2000 passed by the High Court dismissing the application of impleadment under Order I Rule 10 of CPC would operate as the *res judicata* on the subsequent application filed by the Respondent Nos. 3 and 4 under Order XXII Rule 10 CPC.

19. The counsel for Appellant submits that even an earlier erroneous decision, which has attained finality, would operate as *res judicata*, for this, reliance has been placed upon judgments of this Court in ***State of West Bengal v. Hemant Kumar Bhattacharjee and Others***³, ***Mohanlal Goenka v. Benoy Kishna Mukherjee and Others***⁴ and ***Daryao and Others v. State of Uttar Pradesh and Others***⁵.
20. The counsel for Appellant further submits that the only exception to the principle of *res judicata*

³ 1962 SCC OnLine SC 319

⁴ (1952) 2 SCC 648

⁵ 1961 SCC OnLine SC 21

is lack of jurisdiction or fraud or opposed by law which is not the case herein. The case of **Allahabad Development Authority (supra)** is to be distinguished as there is no statutory prohibition or direction nor is it alleged or pleaded that earlier order was passed despite a statutory prohibition or direction or that the High Court lacked jurisdiction to pass the earlier order. Moreover, the said judgment has been distinguished by this Court in **S. Ramachandra Rao v. S. Nagabhushana Rao and Others**⁶.

21. Learned counsel for the Appellant concluded the arguments by submitting that the second application filed by subsequent purchasers seeks same relief on the basis of same sale deed and between the same parties therefore, would be hit by principle of *res judicata*. The earlier order dated 19.05.2000 passed by the High Court would bind the coordinate bench at the subsequent stage of same proceedings. Further, Respondent Nos. 3 and 4, the subsequent

⁶ (2024) 17 SCC 361

purchasers, have no right to file an application for restoration.

22. On the other hand, the counsel for subsequent purchasers – Respondent Nos. 3 & 4, submits that the application under Order XXII Rule 10 CPC is not barred by principle of *res judicata* as fresh cause of action arose on 02.02.2018 when appeal and cross-objections were dismissed but later on an application by the Appellant, the cross-objections were restored but not the main appeal. Therefore, the earlier dismissal of application under Order 1 Rule 10 CPC does not bar present application. The scope under Order I Rule 10 is different from that under Order XXII Rule 10 of the CPC.
23. The counsel for subsequent purchasers further submits that section 146 of the CPC also protects the assignee *pendente lite*. Under section 146 of the CPC Respondent Nos. 3 and 4 were entitled to move an application under Order XLI Rule 19 CPC for restoration of the appeal. Further, previous application under Order I Rule 10 of CPC was not filed in the cross-

objections. Also, the previous order dated 19.05.2000 would not operate as *res judicata* since it was obtained by playing fraud upon the court.

24. Learned counsel for subsequent purchasers concluded the arguments by submitting that no prejudice would be caused to the Appellant if Respondent Nos. 3 and 4 are impleaded in the main appeal as well as the cross-objections especially when the prior owners have lost interest in the appeal after the sale. There is collusion between Appellant and the prior owners as they are related to each other.
25. Learned counsel for Respondent Nos. 3 and 4 relied upon: ***Raj Kumar v. Sardari Lal and Others***⁷, ***Amit Kumar Shaw and Another v. Farida Khatoon and Another***⁸, ***Smt. Saila Bala Dassi v. Smt. Nirmala Sundari Dassi and Another***⁹, ***Thomson Press (supra)*** and ***Allahabad Development Authority (supra)***.

⁷ (2004) 2 SCC 601

⁸ (2005) 11 SCC 403

⁹ 1958 SCC OnLine SC 140

26. Having heard the learned counsel for the Appellant and Respondent Nos. 3 and 4, and considering the written submissions filed by both the parties as also the impugned order(s), we find it apposite that prior to undertaking and answering the aforementioned submissions as raised, it is imperative to delve into the statutory provisions as well as the existing jurisprudence as developed by this Court while dealing with such provisions relatable to (i) whether the doctrine of *res judicata* would apply upon an earlier decision based upon erroneous consideration of facts?; (ii) whether in the present facts and circumstances there can be a bar on a subsequent application under Order XXII Rule 10 of the CPC in the main appeal? and (iii) whether application under Order XXII Rule 10 of the CPC be allowed in the cross-objections at this stage?
27. Section 11 of the CPC would be relevant which reads as follows:

“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.

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Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.” (emphasis supplied)

It is, by now, a settled position that the doctrine of *res judicata* is applicable on subsequent stage(s) of same proceedings if, the question or issue involved has been decided at an earlier stage of same litigation as held in **S. Ramachandra Rao (supra)**. Further, it is also well settled, as laid down in several decisions, that a judicial decision binds whether it is right or wrong. An error of law or fact, committed by a judicial or quasi-judicial body cannot be impeached otherwise than in appeal, unless it relates to a matter of jurisdiction. The findings would be binding on the parties as held in **Mathura Prasad Bajoo Jaiswal and Others**

v. Dossibai N.B. Jeejeebhoy¹⁰ and Hemant Kumar Bhattacharjee (supra). In the case of ***Dr. Shah Faesal and Others v. Union of India and Another¹¹, Sulthan Said Ibrahim v. Prakasan and Others¹²*** and other catena of judgments have settled that ruling of a coordinate bench binds subsequent coordinate benches.

28. It has been reiterated by the Supreme Court repeatedly that to attract the doctrine of *res judicata* there must be conscious adjudication of an issue. A plea of *res judicata* cannot be claimed unless the judgment carries an expression of an opinion on the merits.
29. In the present case, the earlier application under Order I Rule 10 of the CPC filed by the subsequent purchasers in the regular second appeal was decided on merits even though based upon an erroneous consideration of facts

¹⁰ (1970) 1 SCC 613

¹¹ (2020) 4 SCC 1

¹² 2025 SCC OnLine SC 1218

therein, therefore, the findings of the Court would be binding upon the parties.

30. The case of **Allahabad Development Authority (supra)** as relied upon by the High Court and Respondent Nos. 3 and 4 is not applicable to the present set of facts as there is no statutory prohibition or direction nor is it alleged or pleaded that earlier order was passed despite a statutory prohibition or direction or that the High Court lacked jurisdiction to pass the earlier order.
31. Therefore, we are unable to concur with the reasoning provided by the High Court in the impugned order.
32. Now, the question to be considered is whether in the present facts and circumstances would there be a bar of *res judicata* on a subsequent application under Order XXII Rule 10 of the CPC filed by the subsequent purchasers for their impleadment in the main appeal.

33. Under Order I Rule 10 of the CPC the court is required to assess as to whether a party has been improperly joined or any person who ought to have been joined or whose persons before the court may be necessary in order to enable the court effectually and completely to adjudicate to settle the questions in the suit is required to be added or deleted. Whereas under Order XXII Rule 10 of the CPC read with Section 146 of the CPC, the Court on creation or devolution of any interest during the pendency of the suit/appeal is required to assess as to whether the suit/appeal is required to be continued by or against the person to or on whom such interest has devolved.

“Order I Rule 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.” (emphasis supplied)

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“Order XXII Rule 10. Procedure in case of assignment before final order in suit.—(1)

In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

10A. Duty of pleader to communicate to Court death of a party.—

Wherever a pleader appearing for a party to the suit comes to know of the death of that party, he shall inform the Court about it, and the Court shall thereupon give notice of such death to the other party, and, for this purpose, the contract between the pleader and the deceased party shall be deemed to subsist.

11. Application of Order to appeals.—

In the application of this Order to appeals, so far as may be, the word “Plaintiff” shall be held to include an appellant, the word “defendant” a respondent, and the word “suit” an appeal.”

34. Order XXII Rule 10 of the CPC is a specific enabling provision governing devolution of interest during the pendency of a suit or appeal. Its operation is distinct from the general joinder of party power under Order I Rule 10. The court's power under Order XXII Rule 10 is triggered by a factual event by an assignment, creation, or devolution of interest and not merely by a party's desire to join proceedings. Only a *prima facie* satisfaction of devolution is required and no detailed inquiry into title is conducted at this stage. The provision applies at every stage, including appellate proceedings, and a subsequent purchaser who acquires interest *pendente lite* may seek substitution or addition through this route. Therefore, the dismissal of an application under Order I Rule 10 of the CPC does not, as a general rule, operate as *res judicata* to bar a subsequent application under Order XXII Rule 10.
35. The two provisions address fundamentally distinct legal situations, and a rejection under one does not constitute a final adjudication on

the merits of the other. Order I Rule 10 CPC governs the addition or deletion of parties who are necessary or proper parties to the suit *ab initio*, i.e., parties who ought to have been joined at the inception of the suit. Order XXII Rule 10 CPC governs the situation where interest in the subject matter of the suit devolves upon a third party during the pendency of the suit, i.e., a transferee or assignee *pendente lite*. The provision enables such a person to apply for leave to continue the proceedings or be brought on record as a representative in interest. Though both the legal provisions are distinct in nature but, remedy sought is similar in nature i.e., impleadment of a party. The scope of Order I Rule 10 and Order XXII Rule 10 do overlap in certain factual matrices.

36. Where the Order I Rule 10 application was considered and rejected on its merits i.e., the court actually examined the transferee's claim, the genuineness/bona fides of the transfer, and the nature of the interest, and that order was not appealed or reviewed, a second application

under Order XXII Rule 10 raising the claim based on the same transfer, same interest, same facts would ordinarily be barred by the principles of *res judicata* as issue has been decided on merits and attained finality. This bar however, would not apply if, the earlier rejection was on a technical or procedural ground without an adjudication on the merits of the transferee's interest, or there is a fresh devolution or assignment after the rejection of an application under Order I Rule 10, giving rise to a distinct cause not earlier considered, or when the earlier order is itself under challenge and has not attained finality.

37. The record reveals that the subsequent purchasers had previously sought an identical relief of impleadment under Order I Rule 10 of the CPC, predicated upon the same registered sale deed executed in their favour. The right to seek substitution or impleadment, if any under Order XXII Rule 10 of the CPC, had squarely accrued and was triggered at the time of filing the initial application. Therefore, in the present

case, the remedies under Order I Rule 10 and Order XXII Rule 10 are overlapping as they are addressing the same underlying question as to whether a person who has acquired an interest *pendente lite* should be brought on record. They are not different causes of action; rather they are different procedural doors to the same relief.

38. Consequently, the underlying issue regarding the subsequent buyer's right to be impleaded on the strength of the said title was earlier directly and substantially in issue between the same parties, litigating under the same title, before a court of competent jurisdiction, and was conclusively decided against them. The subsequent application under Order XXII Rule 10 of the CPC is nothing but a re-agitation of a settled issue under a different statutory provision, which is impermissible and hit by the principles of *res judicata*. This Court, in the case of **Sulthan Said (supra)** and **B.S. Lalitha and Others v. Bhuvanesh and Others**¹³, has clarified that once an issue or a summary

¹³ 2026 SCC OnLine SC 860

challenge (e.g., rejecting a plaint) has been decided and attained finality, a litigant cannot re-agitate the same objections. This applies even if they switch the specific legal provision used or have different legal representatives file the application.

39. Even though the previous order was based upon erroneous consideration of facts, appropriate legal remedies were available for the subsequent purchasers - Respondent Nos. 3 and 4 to challenge the findings of the earlier order dated 19.05.2000. Nevertheless, it is also not the case of the subsequent purchasers that they are entitled to any portion of the suit property which were under dispute in the main appeal. Hence, subsequent purchasers - Respondent Nos. 3 & 4 cannot be impleaded in the main appeal nor can the main appeal be restored.
40. However, as noted above the earlier application under Order I Rule 10 of the CPC was filed for impleadment in the main appeal only and not in the cross-objections. Therefore, the principle of *res judicata* will not apply qua the application

filed under Order XXII Rule 10 of the CPC in the cross-objections preferred by the Appellant.

41. In the instant case, the main appeal filed by the prior owners and the cross-objections filed by the Appellant were dismissed for non-prosecution. Therefore, the rights of the parties including, subsequent purchasers were fortified in accordance with the First Appellate Court judgment and decree.
42. Thereafter, despite requests by the subsequent purchasers to the prior owners, they neither appeared before the Court nor took any steps for restoration of the main appeal while the cross-objections were revived and restored on an application being allowed as filed by the Appellant. This resulted in material change in circumstances causing grave prejudice to the rights of the subsequent purchasers because of non-prosecution by the prior owners qua the property purchased which is the subject-matter in the cross-objections. Also, the possibility of a collusion between the Appellant and sellers of the subsequent purchasers - Respondent Nos. 3

and 4 cannot be ruled out. This raises a new cause of action in favour of the subsequent purchasers which was neither a “matter directly or substantially” in issue during the earlier hearing on application under Order I Rule 10 nor a matter which could ("might and ought") have been raised.

43. In case of **Thomson Press (supra)**, it was held that once transferor *pendente lite* loses interest in the litigation, the transferee can be added as a party as it may suffer prejudice on account of the transferor losing interest. In **Amit Kumar (supra)**, this Court stated that a transferee *pendente lite* is vitally interested in the litigation to the extent he has acquired his interest from the respondent, and the latter (respondent) may not properly defend the suit, he may collude with the plaintiff. Therefore, a transferee *pendente lite* is entitled to be heard on merits in a case where his predecessor in interest was made a party.
44. Consequently, the impugned judgment and order passed by the High Court is set aside in

part, to the extent that it directs the restoration of the main appeal and the impleadment of the subsequent purchasers therein. Conversely, the High Court order allowing the application for impleadment of the subsequent purchasers as respondents in the cross-objections is sustained and upheld.

45. The Appeal is partly allowed in above terms.
46. There shall be no order as to costs.
47. Pending application(s), if any, also stands disposed of.

.....J.
[SANJAY KAROL]

.....J.
[AUGUSTINE GEORGE MASIH]

**NEW DELHI;
JULY 27, 2026.**