

MUKHTIAR AHMED
v.
SMT. HUSAN BANO AND ORS.

A

FEBRUARY 14, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

B

Code of Civil procedure, 1908

Section 11—Res Judicata—Suit filed by co-sharer—Finding recorded that he was entitled to 1/5th share in the property and not 2/3rd share—Subsequent suit for declaration that he was entitled to 2/3rd share—Finding in earlier suit operates as res judicata—Hence subsequent suit rightly dismissed by the High Court.

C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1812 of 1978.

D

From the Judgment and Order dated 18.5.78 of the Allahabad High Court in Second Appeal No. 1341 of 1968.

R.K. Mehta for the Appellants.

E

Aseem Mehrotra and P.K. Jain for the Respondents.

The following Order of the Court was delivered :

The appellant had laid the suit for declaration of 2/3rd share of the house in his favour, on the premise that he was a co-owner. It is not in dispute that on a previous occasion in a suit filed by the co-sharer, a finding was recorded that he was not entitled for 2/3rd share but to 1/5th share. The said decree became final. In view of the matter, it operates as *res judicata* as against the co-owners. He cannot claim any share in the suit for 2/3rd share. The High Court, therefore, was right in dismissing the suit. We do not think there is any legality in the finding recorded by the High Court.

F

G

The appeal is accordingly dismissed. No costs.

G.N.

Appeal dismissed. H