



Constructive Res Judicata beyond successive Suits: Examining the supreme court's extension of section 11 CPC to successive stages within the same proceeding in *sulthan Said Ibrahim v. Prakasan*

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Abstract

Section 11 of the Code of Civil Procedure, 1908 ("CPC") and its Explanation IV together create the doctrine of constructive res judicata: a matter which a party might and ought to have raised in an earlier proceeding, but did not, is deemed to have been decided against that party and cannot be agitated afresh. For nearly a century, Indian courts have applied this deeming fiction almost exclusively to bar a subsequent, separate proceeding, whether a fresh suit, a fresh writ petition, or a fresh public interest litigation, from reopening a question that an earlier and distinct proceeding could have settled. A second and analytically separate line of authority, tracing to the Supreme Court's 1960 decision in *Satyadhyan Ghosal v. Deorajin Debi*, holds that an issue actually decided at one stage of a single continuing proceeding binds the parties at all later stages of that same proceeding. These two lines, the constructive bar between separate proceedings and the ordinary bar between stages of one proceeding, developed independently and were never, until recently, treated as a single doctrine. In *Sulthan Said Ibrahim v. Prakasan*, decided in May 2025, the Supreme Court held that a party who had an opportunity to object to his impleadment in a suit, but did not, was barred by constructive res judicata from later applying, in the same execution proceeding, to have his name deleted from the party array. This article argues that the decision does more than reaffirm settled doctrine: it grafts the constructive, might-and-ought deeming fiction, previously reserved for separate proceedings, onto the quite different, and previously undemanding, bar that operates between stages of a single proceeding. It examines why this graft is doctrinally significant, situates it against the Supreme Court's own caution, expressed barely a year later in *Makardhwaj Ram v. Jagdish Rai*, against the mechanical application of constructive res judicata, and proposes a limiting principle under which the extension should operate only where the omitted objection was capable of being raised through a formal, contested application at the earlier stage.

Keywords: Code of Civil Procedure, 1908, Section 11, constructive res judicata, Explanation IV, res judicata between stages of the same proceeding, Order I Rule 10, execution proceedings, finality of orders

Introduction

Two Doctrines, One Provision

Section 11 CPC gives statutory form to a principle older than the Code itself: that litigation must at some point come to an end, and that a matter once finally decided between the same parties by a competent court cannot be reopened in a subsequent suit. The section, on its face, speaks of a former suit and a subsequent suit; it is concerned, textually, with the relationship between two distinct pieces of litigation. Explanation IV to the section extends this bar to a matter that was never actually litigated at all: it deems a ground that a party might and ought to have raised in the former suit, but did not, to have been directly and substantially in issue in that suit, and therefore decided against the party who omitted it. This is the doctrine known as constructive res judicata, and its effect is to penalise silence, treating an omitted plea as though it had been raised and lost.

Running alongside this statutory doctrine, and developed largely through case law rather than the text of Section 11 itself, is a second and conceptually distinct principle: that an issue actually and finally decided at one stage of a proceeding, for instance by an unappealed interlocutory order, binds the parties at every later stage of that same, still-pending proceeding. This second principle answers a different question. Section 11 and its Explanation IV ask whether a new proceeding may reopen what an old, separate proceeding settled or should have settled. The second

principle asks something narrower: whether a single, ongoing proceeding may contradict itself. The central claim of this article is that the Supreme Court's decision in *Sulthan Said Ibrahim v. Prakasan*, delivered on 23 May 2025, collapses this distinction by applying the constructive, might-and-ought fiction of Explanation IV, developed for the first question, to answer the second ^[1].

The Traditional Domain of Constructive Res Judicata: Between Successive Proceedings

The locus classicus for constructive res judicata is the Supreme Court's 1977 decision in *State of Uttar Pradesh v. Nawab Hussain*. A police sub-inspector, dismissed from service, challenged his dismissal in a writ petition under Article 226 of the Constitution, but did not, in that petition, raise the specific ground that the officer who dismissed him lacked the competence to do so. When the writ petition failed, he filed a civil suit raising precisely that ground. The Supreme Court held the suit barred: the ground was one that the respondent might and ought to have raised in the earlier writ petition, and Explanation IV therefore deemed it to have been raised and rejected there ^[2]. The decision fixed the paradigm for constructive res judicata as a doctrine operating across two formally distinct proceedings, a writ petition and a subsequent suit, brought by the same party against the same opponent on what was, in substance, the same underlying grievance.

The Court extended this paradigm, without altering its essential two-proceeding structure, in *Forward Construction Co. v. Prabhat Mandal (Regd.)*, Andheri. There, an earlier public interest litigation challenging a construction project had been dismissed; a fresh, differently constituted public interest litigation later sought to raise grounds that could have been urged in the first. The Supreme Court held that constructive res judicata could, in principle, apply even to successive public interest litigations, though on the facts before it the bar did not operate because the earlier litigation was found to lack bona fides^[3]. What both decisions share, and what has been treated ever since as the doctrinal home of Explanation IV, is a structure of two separate proceedings: an earlier one, formally concluded, and a later one, formally distinct, in which the omitted ground resurfaces.

A Separate and Older Line: Res Judicata Between Stages of the Same Litigation

It would be a mistake, however, to think that Indian law had no doctrine at all governing self-contradiction within a single proceeding before Sulthan Said Ibrahim. In *Satyadhyan Ghosal v. Deorajin Debi*, decided as early as 1960, the Supreme Court addressed a decree-holder's attempt to reopen, at a later point in execution, a question of statutory applicability that had already been decided against him at an earlier point in the very same execution proceedings. The Court held that where a matter of fact or law has been decided between the parties at one stage of a proceeding, and that decision has become final because no appeal was taken or because an appeal was dismissed, neither party may reargue the same matter at a later stage of that same proceeding^[4]. This is res judicata in its ordinary, non-constructive sense: it operates only on a matter that was actually decided, not on a matter that could have been raised but was not. Its rationale, moreover, is closer to the ordinary law of interlocutory finality and appellate discipline than to the might-and-ought fiction of Explanation IV: a court simply may not, without new facts, contradict its own earlier, unappealed ruling in the same file. For roughly sixty-five years, then, Indian civil procedure operated with two separate and non-overlapping principles: a constructive bar, resting on the deeming fiction of Explanation IV, that prevented an omitted ground from resurfacing in a fresh and separate proceeding; and an ordinary bar, resting on the finality of unappealed orders, that prevented an actually decided matter from being reopened at a later stage of the same, continuing proceeding. *Sulthan Said Ibrahim* is significant precisely because it is the point at which these two previously distinct principles were, for the first time, treated as interchangeable.

Sulthan Said Ibrahim v. Prakasan: Facts and Holding

The dispute arose out of a suit for specific performance, O.S. No. 617 of 1996, instituted before the Sub-Court, Palakkad, in respect of a shop property in Kerala. A decree in the plaintiff's favour was passed in 2003. The original defendant, Jameela Beevi, died in 2008 while execution of that decree was still pending, and her legal representatives, including the appellant, Sulthan Said Ibrahim, her grandson, were brought on record in the execution proceedings. That step was not challenged at the time. Several years later, and after the appellant had already participated in a series of interlocutory applications in the execution proceedings

without raising any objection to his own presence on the record, he filed an application under Order I Rule 10 CPC seeking to have his own name deleted from the array of parties, contending that he was not, in fact, a legal heir of Jameela Beevi under Muslim personal law and that he held an independent tenancy right in the property^[5].

The Trial Court dismissed this application, describing it as a ruse to delay execution of a two-decade-old decree and holding it barred by constructive res judicata; the Kerala High Court affirmed. The Supreme Court, in a judgment authored by Justice J.B. Pardiwala (Justice R. Mahadevan concurring), dismissed the appellant's further appeal. The Court held that the principle of res judicata applies to applications for impleadment and deletion of parties under Order I Rule 10 CPC, and that a party who had the opportunity, at the time of his impleadment, to object that he was not in fact a legal heir, but who instead participated in the litigation for years without raising that objection, is barred by constructive res judicata from raising it later in the same proceeding^[6]. The Court's language, invoking the object of res judicata as securing finality and preventing the harassment of a decree-holder through repetitive, tactically timed applications, drew explicitly on the constructive, might-and-ought register of Explanation IV rather than on the narrower, actually-decided register of *Satyadhyan Ghosal*^[7].

The Doctrinal Move: Grafting the Constructive Fiction onto the Same-Proceeding Line

The significance of *Sulthan Said Ibrahim* lies not in its outcome, which few would dispute was just on the facts, but in the doctrinal route by which the Court reached it. The appellant's earlier silence about his heirship was not an issue that had actually been raised and decided against him at the time of his impleadment; no one had litigated the question of his status as a legal heir at that stage, still less decided it. What the Court did, in barring his later application, was to deem that question to have been raised and decided against him, precisely the operation that Explanation IV performs between separate proceedings, and to apply that deeming operation within a single, continuing execution proceeding. *Satyadhyan Ghosal* would have permitted the Court to reach the same result only if the appellant's heirship had actually been contested and ruled upon at the time of impleadment; since it had not been, the Trial Court and the Supreme Court could reach the same practical outcome only by reasoning in the register of constructive, not actual, res judicata.

This is a genuine doctrinal extension, not a semantic restatement of settled law. It answers a question that neither *Nawab Hussain* nor *Satyadhyan Ghosal*, taken alone, had settled: whether the might-and-ought fiction, which had always operated at the threshold between one proceeding and the next, could operate instead at the threshold between one stage and the next stage of the very same proceeding. *Sulthan Said Ibrahim* answers that question in the affirmative, and in doing so it converts constructive res judicata from a doctrine of inter-proceeding finality into one of intra-proceeding finality as well.

Why This Matters: Res Judicata, Waiver, and the Ordinary Finality of Orders

The distinction is not academic pedantry; it changes what a court must ask before shutting a litigant out. Ordinary procedural doctrines already existed, well before *Sulthan*

Said Ibrahim, to prevent a party from indefinitely reopening a proceeding through belated objections: the law of waiver, the principle that acquiescence in an order may estop a party from later challenging it, and the trial court's inherent case-management discretion to refuse a transparently dilatory application. Each of these doctrines asks a fact-sensitive question about the particular party's conduct, knowledge, and prejudice to the other side. Constructive res judicata, by contrast, asks a more categorical question, whether the ground might and ought to have been raised earlier, and once that question is answered affirmatively, Explanation IV supplies an irrebuttable deeming fiction: the matter is treated as conclusively decided, regardless of the individual equities. Extending that categorical, fiction-driven doctrine into the same proceeding therefore raises the stakes of the enquiry considerably higher than an ordinary waiver analysis would. A court that might have hesitated to find waiver on a doubtful record can, once it invokes constructive res judicata, dispose of the objection without further enquiry into prejudice or bona fides at all, because the statute itself has already decided the matter by fiction.

Critical Analysis: Does the Extension Over-Extend the Doctrine?

There is a respectable argument that the extension in Sulthan Said Ibrahim is not merely defensible but overdue, since it closes an obvious gap: if a court could always treat an actually decided matter as final at a later stage of the same proceeding under Satyadhyan Ghosal, there was no principled reason why a matter that a party culpably failed to raise, and could easily have raised, should be treated more leniently merely because it happened to arise within one continuing proceeding rather than across two. Viewed this way, Sulthan Said Ibrahim simply brings the intra-proceeding line into parity with the inter-proceeding line, removing an anomaly rather than creating one.

A more cautious view, however, is available, and this article inclines toward it. Constructive res judicata between separate proceedings developed its safeguards precisely because the two proceedings involved are formally distinct, often years apart, sometimes before different fora, and always concluded by a final judgment or order that closes the earlier chapter definitively before the later one opens. Within a single, continuing proceeding, by contrast, matters remain fluid by design: an execution proceeding, in particular, can run for decades, punctuated by successive interlocutory applications, changes in the identity of the parties through death and succession, and shifts in factual circumstances that no one anticipated at an earlier stage. Treating every earlier opportunity to object as an irrebuttable, deemed adjudication risks converting the ordinary business of a long-running proceeding, filing one application after another as circumstances genuinely change, into a minefield in which the first missed opportunity forecloses every later one, however different the underlying facts turn out to be. The appellant in Sulthan Said Ibrahim may well have deserved to lose; but the reasoning by which he lost, if applied without qualification, could equally defeat a litigant who missed an earlier opportunity for entirely innocent reasons, since Explanation IV, once invoked, does not ordinarily enquire into why the ground was not raised, only into whether it might and ought to have been.

A Contemporaneous Corrective? Makardhwaj Ram v. Jagdish Rai

That this concern is not merely theoretical is suggested by the Supreme Court's own subsequent decision in Makardhwaj Ram v. Jagdish Rai, delivered on 11 June 2026, barely more than a year after Sulthan Said Ibrahim. The case, admittedly, concerned constructive res judicata in its traditional, inter-proceeding sense: the plaintiff's title to a larger parcel of family land, derived from a 1960 sale deed, had not been asserted in earlier suits that had challenged only specific, subsequent sales of portions of that land, and a High Court had held a later suit asserting the 1960 title barred by constructive res judicata. The Supreme Court reversed, holding that there had been no real occasion to assert the 1960 title in the earlier, narrower suits, and cautioning in general terms that constructive res judicata must be applied with regard to the facts and circumstances of each case rather than mechanically, particularly in long-running family property disputes where rigid technical rules can produce unjust results^[8]. Even though Makardhwaj Ram did not concern the intra-proceeding extension worked by Sulthan Said Ibrahim, its note of caution against mechanical, fact-insensitive use of the might-and-ought fiction sits in some tension with an extension that, on its face, applies that same fiction to an even more fluid and long-running species of proceeding, namely execution. The two decisions, read together, suggest a Supreme Court that is simultaneously widening the doctrine's formal reach and reminding lower courts not to apply it as a mechanical bar, without yet having articulated how these two impulses are to be reconciled when the extension itself is what is in question.

Toward a Limiting Principle

This article does not suggest that Sulthan Said Ibrahim was wrongly decided on its facts. The appellant had been a participating party for years, had filed and resisted a series of interlocutory applications in that capacity, and sought deletion only when it became tactically convenient to delay execution; a finding of waiver or estoppel would very likely have produced the same result on those facts, without needing to invoke Explanation IV at all. The concern is with the generality of the reasoning the Court adopted, and with how future courts, faced with less clear-cut facts, might apply it. A limiting principle worth articulating, and worth testing in future litigation, is this: the constructive res judicata bar should operate within a single, continuing proceeding only where the earlier stage involved a formal, contested application, of the kind that squarely presented the omitted ground for adjudication, such as the appellant's own impleadment application in Sulthan Said Ibrahim, and not merely a passive opportunity that arose incidentally in the course of some other application. Confined in this way, the extension would continue to serve its evident purpose of preventing tactical, dilatory litigation of exactly the kind seen in Sulthan Said Ibrahim, without licensing courts to treat every silence at every prior stage of a long-running execution as an irrebuttable, deemed adjudication of whatever question a party later wishes to raise.

Conclusion

Sulthan Said Ibrahim v. Prakasan is best understood not as a routine reaffirmation of settled res judicata doctrine but as the point of convergence between two lines of authority that

had developed independently for over six decades: the constructive, might-and-ought bar of Explanation IV, built for the relationship between separate proceedings, and the ordinary, actually-decided bar of *Satyadhyan Ghosal*, built for the relationship between stages of one continuing proceeding. By applying the former's deeming fiction to answer the latter's question, the Supreme Court has, for the first time, made constructive *res judicata* available within a single, ongoing proceeding, and not merely between one proceeding and the next. The result reached on the facts of that case was almost certainly correct, but the reasoning, generalised, carries a real risk of converting the ordinary give-and-take of long-running proceedings, particularly protracted executions, into a series of one-shot opportunities in which an innocent or reasonable failure to object at an early stage forecloses every later one. The Supreme Court's own caution, expressed just over a year later in *Makardhwaj Ram v. Jagdish Rai*, against the mechanical application of constructive *res judicata* suggests that the Court itself is alert to this risk, even though it has not yet addressed it in the specific context of the intra-proceeding extension it created in *Sulthan Said Ibrahim*. Until it does, lower courts applying that extension would do well to confine it to cases where the omitted objection could have been, and was not, raised through a formal contested application at the earlier stage, rather than treating every missed opportunity in a long-running proceeding as conclusively fatal to a later one.

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