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are of opinion that the account of mesne profits should run only from the commencement of the suit. They think that the decree, with that modification, ought to be affirmed, and they will humbly advise Her Majesty accordingly. But their judgment must be understood to proceed on the establishment of Q as a genuine permission to adopt, and not upon the ground upon which the High Court principally relied. The costs of the appeal must follow the result.

Agents for the appellant: Messrs. *Gregory, Rowcliffes* and *Rawle.*

Agents for the respondent: Messrs. *Burton, Yeates,* and *Hart.*

APPELLATE CIVIL.

Before Sir W. Morgan, C.J., and Mr. Justice Innes.

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RAMA RAO (PLAINTIFF), APPELLANT, *v.* SURIYA RAO AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Res Judicata.—Identity of bases of claims.

WHERE the relief sought for in respect of certain property in a suit is different from the relief sought for in respect of the same property in a prior suit (between the same parties or their privies), but the title on which the relief sought for is based is the same in both suits, the dismissal of the former suit for failure to establish such title is a bar to the second suit.

Dismissal of a claim for failure on part of plaintiff to produce evidence to substantiate it, is of the same effect as a dismissal founded upon evidence, for the purpose of barring a subsequent suit as *res judicata.*

THE parties to this suit were the grandsons of Niladri Ráo, the Zamíndár of Pittapuram. He died many years ago, leaving a widow Bavaniya and two sons, Surya Ráo and Kumara Venkata Ráo, of whom the former succeeded to the zamíndári on his father's death. The plaintiff was the son of Suriya Ráo, and had succeeded him as Zamíndár of Pittapuram. The respondents were his cousins, the sons of Kumara Venkata Ráo. The suit was brought to recover certain houses and grounds in the fort of Pittapuram alleged to form part of the ancient zamíndárí. According to the allegations in the plaint this property had been in the occupation of the plaintiff's grandmother, Bavaniya, as

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her place of residence until her death in 1870, since which time the defendants who had lived with her continued in occupation and refused to quit.

Among other defences it was urged that the suit was barred by the second section of the Civil Procedure Code, Act VIII of 1859, the matter in dispute having already been adjudicated in a former suit between the parties. In that suit, which was brought by the plaintiff in 1862, the defendants were Bavaniya the widow of Niladri Ráo, Kumara Venkata Ráo the father of the respondents, and Lakshmi Venkamma Ráo the sister of Kumara Venkata Ráo. It was brought to recover two estates not now in question, and also to impeach the acts of the widow, Bavaniya, in regard to other property belonging to the zamíndárí assigned to her for her maintenance. A question was raised whether the houses and grounds in the fort, for which the present suit was brought, were included in the latter property, and it was found as a fact that they were; the plaintiff in the former suit sought to restrain the widow from making illegal transfers of the property, and also to obtain the cancellation of two documents of transfer made and registered by her. Several issues were framed, the third of which was in the following words:—

"Whether the property referred to as No. 2 in the plaint and plaint list" (*not including the property now in dispute*) "was given to 1st defendant as maintenance after her husband's death, or whether, as stated by 1st defendant, the property so referred to was given her by her husband for expenses to be incurred for charitable purposes, and has been in the defendant's possession for 35 years."

The suit was dismissed by the Court of First Instance, the judgment stating, as to the property now in dispute, that no evidence had been offered on either side.

On appeal the order of dismissal was, as to the property now in dispute and the two estates sued for, affirmed, the reason assigned in regard to the former being the same as that given by the Court of First Instance.

As to the remaining property the decree of the Appellate Court declared and directed that, "subject to the 1st defendant's possession and enjoyment for her maintenance, the plaintiff is entitled to the absolute proprietary right in the lands described

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as No. 2; that the 1st defendant has no right or interest entitling her to alienate the said lands; and that the transfer made to the 2nd and 3rd defendants is not valid or binding."

The District Judge held that this decision was a bar to the present suit, which he accordingly dismissed. The plaintiff appealed.

Mr. *Miller* for the appellant.—The former suit was only for a declaratory decree, and a perpetual injunction to restrain from waste and alienation, and not for possession. No doubt the foundation of our title was the same. But our cause of action, our claim, is different in the present from that in the former suit. A man may, I submit, sue for as many different forms of relief as he likes, though in each suit he may rest on the same title; it is the cause of action, the claim, which makes the difference. I admit that the former decision is strong evidence in the present suit, but it is not, I submit, conclusive evidence or *res judicata*. In the present suit our cause of action arose subsequently to the determination of the former suit, *viz.*, on the death of the grandmother (Bavaniya), the first defendant in the former suit. I submit that the former suit being a mere suit for a declaration, the judgment therein cannot be regarded as *res judicata*, though I admit that it is evidence.

Mr. *Johnstone* for the respondent.—Whether in the former suit the plaintiff sued for recovery of the property claimed in this suit —which I maintain that he did, though I admit that the wording of the plaint (in the former suit) is rather obscure—or whether he only sued for a declaration that he was entitled to it as reversioner; in either case, the decision in that former case was a decision against him as to his title to the property now in question. His basis, and cause of action, in that case was the same. It was his title, his claim as reversioner that he sued on then; and it is his claim as reversioner that he is suing on now.

Mr. *Miller* in reply:—There was no decision whatever on the particular property now in question in the former suit. Neither party produced evidence, and therefore there was no adjudication. The issues, too, were different: in the former case the issue was whether the property was given to the grandmother as maintenance, or, as she alleged, as a gift for charitable purposes.

The Court (MORGAN, C.J., and INNES, J.) after stating the facts proceeded as follows:—

It thus appears that there has been an adjudication by a competent Court in a former suit between the same parties, or parties under whom they claim. We think it is also established that this adjudication was substantially in respect of the property now in dispute, and that any addition since made by the widow or the respondents in the shape of new buildings erected on the site cannot affect the present question. As to the matter in controversy in the two suits, it is to this extent different, that in the former suit the plaintiff, as reversioner, the widow's life estate being then in existence, sought to restrain her from acts of waste, to secure the estate, and to set aside deeds of transfer made by her; whereas in this suit the plaintiff asks to recover possession on the termination of the life estate. The relief asked for is different, new circumstances having occurred, but the title now sued upon is the same which was formerly put forward. That the widow Bavaniya held property belonging to the zamíndári as part of her maintenance on her husband's death was a question raised distinctly by the pleadings in the former suit.

The failure on the plaintiff's part to produce the evidence in support of that issue which he was bound to produce does not make the order of dismissal passed in consequence of his default the less an adjudication.

The same title is the basis of the claim in both suits and part of the matter in dispute in the former suit, as in the present one, is the question of right, that is to say whether the property in dispute belongs to the Zamíndár, the widow Bavaniya having held it merely as a portion of her maintenance allowance.

We think the suit is barred, and that this appeal should be dismissed with costs.

Appeal dismissed.