On these grounds we must hold that exhibit A is altogether inadmissible in evidence. The appeal, therefore, fails, and we must dismiss it with costs.

LAKSHMAMMA v. KAMESWARA.

## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Wilkinson.*

VENKATACHALAPATI (DEFENDANT), APPELLANT,

*v.*

KRISHNA (PLAINTIFF'S REPRESENTATIVE), RESPONDENT.*

1889. Oct. 30, 31. Nov. 27.

*Civil Procedure Code*, s. 13—Res judicata—*Rent Recovery Act (Madras)—Decision of Revenue Court as to landlord's title.*

In a summary suit filed by a landlord against his tenant in the Court of the Deputy Collector under the Rent Recovery Act (Madras), s. 9, to enforce acceptance of a patta by the defendant, it appeared that, in a former suit between the same parties in the same Court, it had been decided that the defendant was the plaintiff's tenant and as such bound to accept a patta from him in respect of the land in question in the present suit:

*Held*, that the defendant was not entitled in the present suit to dispute the plaintiff's title, since the former decision constituted it *res judicata*.

SECOND APPEAL against the decree of J. A. Davies, Acting District Judge of Tanjore, in appeal suit No. 114 of 1886, confirming the decision of N. Krishnasami Ayyar, Acting Deputy Collector of Tanjore Division, in summary suit No. 224 of 1884.

Suit brought by a landlord against his tenant under Rent Recovery Act, s. 9, to enforce acceptance by the defendant of a patta tendered to him by the plaintiff, and the execution of a muchalka by him to the plaintiff.

The defendant disputed the title of the plaintiff. But it appeared that, in a former suit between the same parties in the same Court, it had been decided that the defendant was the plaintiff's tenant and as such bound to accept a patta from him in respect of the lands in question in the present suit.

* Second Appeal No. 917 of 1888.

VENKATA-CHALAPATI v. KRISHNA.

The Deputy Collector decided in favor of the plaintiff, and this decision was upheld on appeal by the District Judge on the ground that the pleas now raised by the defendant had been decided against him in the former suit.

The defendant preferred this second appeal against the decree of the District Judge.

*Bhashyam Ayyangar* for appellant.

The District Judge was wrong in passing a decree for the plaintiff whose title was disputed by the defendant and had not been established by him ; *Rama* v. *Tirtasami*(1) the decision of a Revenue Court in a summary suit has a binding force only for the current *fasli*, it cannot constitute any matter *res judicata*, for it operates merely with regard to the one patta to which alone it purports to relate.

(COLLINS, C.J.—When it has once been decided that the plaintiff is your landlord, can you deny his title next year?)

Yes, if the decision is a decision in a summary suit. Similarly, a Small Cause Court has, year after year, to try suits for rent in respect of the same premises. Nor does it make any difference that the second suit is a summary suit like the first—*Debi Prasad* v. *Jafar Ali*(2), *Chunder Coomar Mundul* v. *Nunner Khanum*(3), and *Boistub Churn Sein* v. *Trahee Ram Sein*(4). There is no hardship on the landlord who might obtain a final and conclusive decision in a Civil Court.

*Pattabhirama Ayyar* for respondent.

The argument as to the tenants' liberty to deny his landlord's title seems to be inconsistent with the terms of sections 9 and 10 of the Rent Recovery Act. Under these sections, the Collector must in the first place consider whether the tenant is obliged to accept a patta, &c., *i.e.*, whether the plaintiff is entitled to impose a patta, *i.e.*, whether he has title to the land. The question is not whether the summary decision would support the plea of *res judicata* in a civil suit. In the cases cited the second Courts were all cases of different jurisdiction, not as here where the Court is identical. In *Rama* v. *Tirtasami*(1) the first suit was a suit in Revenue Court to enforce a patta, the second was a suit in a Civil Court by the tenant for a declaration. In *Debi Prasad* v. *Jafar Ali*(2) the

(1) I.L.R., 7 Mad., 61.
(2) I.L.R., 3 All., 40.
(3) 11 Beng. L.R., 434.
(4) 15 W.R., 32.

first suit was instituted in a Revenue Court, the second suit in a Civil Court for a declaration of proprietary right. In *Chunder Coomar Mundul* v. *Nunner Khanum*(1) the first suit was instituted in a Revenue Court, the second was a suit to obtain possession of the land. *Boistub Churn Sein* v. *Trahee Ram Sein*(2) was a case of a revenue suit followed by a civil suit. See also Evidence Act, ss. 109, 116, and Civil Procedure Code, s. 13. According to *Birchunder Manickya* v. *Hurrish Chunder Dass*(3) even an *ex-parte* decree passed in a Revenue Court supports plea of *res judicata*; and here there has not only been a series of petitions for very many years, but also a number of contested suits; the result has always been in favor of the landlord, whether in suits to enforce acceptance of pattas or in suits to set aside attachments.

The plea of *res judicata* must prevail even independently of section 13 of the Civil Procedure Code resting on the maxim *nemo debet bis vexari eâdem causâ*, see *Krishna Behari Roy* v. *Brojeswari Chowdranee*(4).

*Bhashyam Ayyangar* in reply.

The multiplicity of decisions does not affect the plea of *res judicata*. As to the case of *Birchunder Manickya* v. *Hurrish Chunder Dass*(3) the decision was not in Revenue Court, it only decides that the fact of a decree having been passed *ex parte* does not affect the plea of *res judicata* founded on it. Compare Bengal Act X of 1859 giving jurisdiction to revenue officers varied by Act VIII of 1869 which gives that jurisdiction of Civil Courts in these cases.

In *Manappa Mudali* v. *S. T. McCarthy*(5) the Full Bench held a Small Cause Court's incidental finding on title is good for the suit in question only; nor would it be valid to support the plea of *res judicata* even if confirmed in appeal by District Court sitting in appeal from the small cause side of a District Munsif's Court. Compare also *Anusuyabai* v. *Sakharam Pandurang*(6). The respondent's contention leads logically to the conclusion that the matter would be *res judicata* in a Civil Court; but this would clearly not be the case. See *Khugowlee Sing* v. *Hossein Bux Khan*(7).

---

(1) 11 Beng. L.R., 434. (2) 15 W.R., 31.
(3) I.L.R., 3 Cal., 383. (4) L.R., 2 I.A., 283.
(5) I.L.R., 3 Mad., 192. (6) I.L.R., 7 Bom. 464.
(7) 7 Beng. L.R., 673.

VENKATA-CHALAPATI v. KRISHNA.

JUDGMENT.—The appellant in this second appeal was the defendant in a suit instituted before the Deputy Collector of Tanjore by the respondent, the inamdar of the village. The suit was brought under Act VIII of 1865 to compel appellant to accept a patta. He pleaded non-liability denying the plaintiff's title as landlord. In a former suit between the same parties in the same Court, it had been decided that the defendant-appellant was the tenant of the plaintiff-respondent and as such bound to accept the patta tendered and to grant his muchalka. This decree was confirmed on appeal by the District Court and there was no second appeal. Both the lower Courts have held that the matter in issue between the parties having been heard and determined in the former suit, the appellant is estopped from raising the same defence in the present suit.

In second appeal it is argued that the decision of a Revenue Court cannot operate as *res judicata* in any subsequent suit between the parties, inasmuch as (1) the said decision is only binding for the *fasli* for which the suit is brought and (2) a Revenue Court can only decide a question of title incidentally and such a decision cannot operate as *res judicata*. The following cases were relied on in support of the appellant's argument: *Rama* v. *Tirtasami*(1), *Chunder Coomar Mundul* v. *Nunner Khanum*(2), *Debi Prasad* v. *Jafar Ali*(3), and *Boistub Churn Sein* v. *Trahee Ram Sein* (4), but none of these cases are in point. In these cases it was held that the decision of a Revenue Court is no bar to a suit brought in the regular Courts. We have not been referred to any case in which it has been held that the doctrine of *res judicata* is not applicable to the Revenue Court and we do not think that the appellant's contention is sustainable.

In adjudicating on a suit to enforce the acceptance of a patta the first question which the Revenue Court has to decide is whether the party sued is bound to accept a patta and give a muchalka, in other words, whether the relation of landlord and tenant subsists (section 10, Act VIII of 1865).

It is conceded that each year's rent is in itself a separate and entire cause of an action. It would therefore, at first sight, seem as if judgment obtained in a suit to enforce the acceptance of a

(1) I.L.R., 7 Mad., 61.
(2) 11 Beng. L.R., 434.
(3) I.L.R., 3 All., 40.
(4) 15 W.R., 32.

patta for one year would only extend to the subject-matter of the suit, leaving the landlord at liberty to bring a fresh suit in the following year and the tenant at liberty to raise any defence he thought proper. But seeing that in the former suit the whole question as to the relation in which the parties stood was substantially and necessarily tried and determined, and that the materials upon which the Judge would have to arrive at a decision are the same in the subsequent as in the prior suit, we are clearly of opinion that even if the former judgment does not bind as an estoppel, it affords such cogent evidence of the relation in which the parties stand that the Deputy Collector would have been perfectly justified in acting upon it, and deciding the question as to status in the affirmative. This was also the opinion of the Calcutta High Court—*Nobo Doorga Dossee* v. *Foyzbux Chowdhry*(1).

We are, however, of opinion that in law the former decision does act as an estoppel. The Revenue Court is empowered by law to determine the question of title and such determination of a matter directly and substantially in issue is a bar to the trial of the same matter in a subsequent suit between the same parties in the same Court, litigating under the same title. The adjudication as to the liability of the defendant to accept a patta having been decided by a competent Court is conclusive and binding on the parties in any subsequent litigation in the same Court—*Krishna Behari Roy* v. *Brojeswari Chowdranee*(2).

Reliance is placed on the decision of this Court in *Manappa Mudalli* v. *McCarthy*(3), and it is argued that as the decision of a Small Cause Court in a case in which a question of title has been raised and decided incidentally is no bar to a suit upon the title, so the decision of the Revenue Court as to the status of the parties is no bar to the litigation of the same question in a subsequent suit. The argument might be sustainable if the subsequent suit was one brought in the Court of a District Munsif, but for many reasons we do not think it of any weight in this case. In the first place an incidental finding even of a District Court on a question of title in a case not admitting of further appeal could not operate as *res judicata* as to that point in a future suit. As remarked by Savigny (Syst. sec. 293) "everything that should have the authority of *res judicata* is and ought to be subject to appeal." Now

(1) I.L.R., 1 Cal., 202. (2) L.R., 2 I.A., 283. (3) I.L.R., 3 Mad., 192.

VENKATA-CHALAPATI v. KRISHNA.

an appeal is allowed from the decision of a Revenue Court on the question of title, and in the present case the District Court in appeal confirmed the finding of the Deputy Collector.

Again the maxim *nemo debet bis vexari eâdem causâ* applies as much to the plea of the defendant in a case as to the case set up by the plaintiff. It would be intolerable if the defendant, who has been declared by a competent Court to be the tenant of the plaintiff and as such bound to accept a patta and grant a muchalka, were to be permitted to put his landlord, year by year, to the proof of his title. It was suggested by Mr. Bhashyam Ayyangar that the landlord's remedy is by suit in the regular Courts, but we see no reason why the plaintiff-respondent, who has obtained the final decision of a competent Court on the question, should be forced to bring a fresh suit to establish his title.

For these reasons we think the Lower Appellate Court was right in holding that the defendant-appellant was not at liberty to raise in this suit those questions which were decided against him in the former suit.

We are also of opinion that the District Judge was justified in finding that the contentions of the defendant were not *bonâ fide*. The Deputy Collector pointed out that the opposition to plaintiff-respondent had been got up by one Shesha Ayyangar, his avowed enemy, and by Kristna Homada, the headman of the caste to which the defendant belongs, that the defendant pleaded complete ignorance of the contents of his written statement and admitted that he gave no instructions to his vakil.

We dismiss this second appeal with costs.