JUDGMENT:—The Subordinate Judge's Court reopened on the 21st June last and the appellants tendered security on the 2nd July. The application for its acceptance was posted to the 12th July, when the appellants did not appear either in person or by pleader. The Subordinate Judge was not satisfied with the security tendered and rejected it. It is alleged that a representation was made that sufficient security would be given, but it is not stated when and by whom. We are not satisfied that the petitioners did what they were bound to do, viz., to attend the court on the day on which the sufficiency of the security was inquired into either in person or by pleader. Nor did they tender other security at once. We have no power to extend the time granted after the expiration of the period mentioned in the original order. Section 549 is imperative. See *Haidri Bai* v. *East Indian Railway Company*(1).

We dismiss this petition with costs.

APPELLATE CIVIL.

Before Mr. Justice Kernan and Mr. Justice Parker.

MADHAVAN (PLAINTIFF), APPELLANT,

and

KESHAVAN AND OTHERS (DEFENDANTS), RESPONDENTS.*

1887. August 30. Sept. 30.

Civil Procedure Code, s. 13, *expl. V.*

Where the uraima right over a certain devasam was vested in five trustees representing different illams, and a suit was brought by one of the trustees to recover certain property alleged to have been illegally alienated by three other trustees to a stranger and dismissed:

Held, that the decree in such suit was a bar to a second suit brought for the same purpose by the fifth trustee, who had not been a party to the former suit, on the ground that he must be deemed to claim under the plaintiffs in the former suit within the meaning of s. 13, expl. v, of the Code of Civil Procedure.

APPEAL from the decree of W. P. Austin, District Judge of North Malabar, confirming the decree of D. D'Cruz, District Múnsif of Chavacherry, in suit No. 199 of 1883.

The plaintiff, one of five uralars or trustees of a devasam, sued

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(1) I.L.R., 1 All., 687. * Second Appeal No. 710 of 1886.

MADHAVAN v. KESHAVAN.

to recover certain land which had been alienated by the other four uralars, defendants Nos. 1 to 4, to defendant No. 5.

Defendant No. 5 pleaded, *inter alia*, that the suit was barred by s. 13 of the Code of Civil Procedure, inasmuch as a former suit, to which plaintiff was no party, brought against him for the same purpose by another of the trustees, had been dismissed.

The lower courts held that the present suit was barred.

Plaintiff appealed.

Sankaran Nayar for appellant.

Srinivasa Rau for respondents.

The Court (Kernan and Parker, JJ.) delivered the following

JUDGMENT:—It appears to us that the uraima right over the devasam was a private right vested in certain illams, one uralar representing each illam. All of the illams except that of plaintiff were represented in the litigation with defendant No. 5 in 1881 (suit No. 337 of 1881 on the file of the Chavacherry District Munsif's Court). At that time plaintiff's adoption was not recognized by the other uralars, but he succeeded in establishing it in December 1882. The uralars are trustees and have no personal pecuniary interest in the devasam or its properties.

There are no grounds for supposing that the litigation of the uralars with fifth defendant was not *bonâ fide*, and therefore we think that the matter is *res judicata* under s. 13, cl. 5, of the Civil Procedure Code.

It might of course be open to plaintiff to sue to set aside the decree on the ground of fraud and collusion, but that is not the cause of action put forward in the present plaint, and from the attitude of his co-uralars in this suit it might be gathered that they were now in the same interest with the plaintiff and making another attempt to upset a decree given against the devasam in previous litigation.

K. P. Kanna Pisharody v. *V. M. Narâyanan Somâyajipad*(1) does not apply. In that case there were several co-owners of a sabha; only some of them sued in respect of the property, and the rest of the co-owners, who were living, were not parties to the suit. Objection was taken on that ground and the objection was allowed. No objection was made in suit No. 337 of 1881 by reason that plaintiff's illam was not represented in the suit. We have no

(1) I.L.R., 3 Mad., 234.

doubt, however, that plaintiff's illam was sufficiently represented by the uralars of the other illams, who had a common interest with plaintiff's illam. MADHAVAN v. KESHAVAN.

The second appeal, therefore, fails and must be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

MADAYYA (PLAINTIFF),

and

YENKATA (DEFENDANT).*

1887. July 15.

Civil Procedure Code, s. 266—Attachment—Standing crops—Immovable property.

Standing crops are, for the purposes of the Code of Civil Procedure, immovable property.

CASE stated by T. Sami Ráu, District Múnsif of Kurnool, under s. 617 of the Code of Civil Procedure as follows :—

"In small cause suit No. 120 of 1886, the plaintiff applied for execution of the decree and asked standing crops to be attached. I objected to order their attachment, saying that they must be regarded as immovable property. The plaintiff's pleader urged that they were movable property, that they had always been sold as such, and that this had been the practice of this court. There is no ruling of the Madras High Court either way, and there are conflicting decisions of the other High Courts. I have the honor, under s. 617 of the Code of Civil Procedure, to submit for decision the question whether standing crops are movable or immovable property for the purposes of the Code of Civil Procedure."

"As standing crops adhere to the land, they must, under the General Clauses Act, be considered as immovable property. In the same way, fruits upon growing trees must be considered as immovable property as they form part of the trees which are attached to the land, and they become movable property only when they are picked from the trees, but the Allahabad High Court have held, in *Nasir Khan, in re*(1), that fruits adhering to trees are movable property. Under this ruling ears of corn adhering to standing stalks

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* Referred Case No. 5 of 1887. (1) I.L.R., 3 All., 168.