made, the Judge, by an order, dated the 30th of October 1883, confirmed the original order of the Munsif, and the prior suit was then terminated only on the 30th of October 1883. The suit therefore is not barred by limitation.

We believe, however, that up to the date of the 30th of October 1883 the plaintiff did prosecute the prior suit with due diligence in good faith and that the cause of action in the first suit, and that in this suit is the same. The addition of members of the family as defendants does not affect the question of limitation. Being of opinion that defendants in suit No. 4 of 1881 were not sued in that suit as representatives of the tarwad and that the decree in this suit does not bind the tarwad, and being also of opinion that this suit is not barred by limitation, we dismiss this appeal with costs.

APPELLATE CIVIL.

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

VYTHINADAYYAN AND ANOTHER (DEFENDANTS NOS. 3 & 4), APPELLANTS,

v.

SUBRAMANYA (PLAINTIFF), RESPONDENT.*

1889. April 5, 13.

Transfer of Property Act—Act IV of 1882, *s.* 52—Lis pendens—*Partition suit—Decree by consent.*

Pending a suit for partition of land, &c., two of the parties to the suit sold part of the land in question to a stranger who was not brought on to the record. After the execution of the sale-deed the parties to the suit entered into a compromise and a decree was passed by consent accordingly. In a suit by the purchaser for possession of the land sold to him:

Held, the purchaser was not bound by the decree passed by consent.

APPEAL under section 562 of the Code of Civil Procedure against the order and decree of K. R. Krishna Menon, Subordinate Judge of Tanjore, in appeal suit No. 744 of 1887, reversing the decree of T. A. Krishnasami Ayyar, District Munsif of Mannargudi, in original suit No. 360 of 1886, and remanding the suit to the Court of the District Munsif to be tried on the merits.

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* Appeal against Order No. 142 of 1888.

VYTHI-NADAYYAN v. SUBRAMANYA.

Suit for partition and possession of land conveyed to the plaintiff by defendant No. 1 and one Ramanna Ayyan by a sale-deed, dated 17th September 1874. At the time when this sale-deed was executed original suit No. 26 of 1874 was pending in the Subordinate Court of Tanjore. The above-mentioned vendors and other members of their family were parties to that suit, and the prayer of the plaint therein was for the partition of the family property including the land in question in the present suit. Original suit No. 26 of 1874 was determined on 27th February 1875 by a decree passed by consent of the parties.

The District Munsif held that the plaintiff was bound by the above decree as a purchaser *pendente lite*, and passed a decree accordingly. On appeal, the Subordinate Judge reversed the decision of the District Munsif observing:—

"It is admitted that the suit in which the decree was passed "was not a contentious one, and that the decree was not the result "of the investigation of the merits of the suit. It proceeded "simply upon a razinama filed by the present plaintiff's "vendors and the then plaintiffs in the suit. It seems to me "that a purchaser *pendente lite*, ought to be bound only by such "results which, from the nature of the suit, and from the relief "prayed, he might expect would take place. He had no reason "to expect that his vendors would be treacherous enough to give "up certain property to their opponents which they had already "sold to plaintiff. The force of *lis pendens* applies only to an "adjudication which is the natural result of the investigation of "the merits of suits and not to mere agreements which the parties "chose to make during the pendency of the suits. If a purchaser "*pendente lite*, did not think fit to become a party to the suit, he "cannot be held bound by any agreement which the parties chose "to make or any order that may be made thereon—*Kasumunnissa* "*Bibee* v. *Nilratna Bose*(1). The plaintiff is not therefore "bound by the razi decree in original suit No. 26 of 1874. "The Munsif's decree, which proceeded upon this preliminary "point, is reversed and the suit remanded for trial on its merits."

Defendants Nos. 3 and 4, who were in possession of the land in question, preferred this appeal.

Pattabhiramayyar for appellants.

(1) I.L.R., 8 Cal., 79, 85.

Bhashyam Ayyangar for respondent.

The arguments adduced on this appeal appear sufficiently for the purpose of this report from the judgment of the Court (Collins, C.J., and Parker, J.).

JUDGMENT.—The facts are as follows:—The plaintiff purchased the property in dispute on 17th September 1874 from defendant No. 1, and his brother, Ramannah, during the pendency of a partition suit (original suit No. 26 of 1874) to which defendant No. 1 and Ramannah were parties, that suit being brought by the present defendant No. 2 and Nagu. The sale-deed purported to convey to the plaintiff plaint items 1, 2 and 3. The plaintiff was not made a party to suit No. 26 of 1874, and it was compromised by the parties. The razinama decree gave to defendant No. 2 and Nagu (plaintiffs in that suit) the western two-thirds in items 1 and 2 and the whole of item No. 3. The defendants contend that the plaintiff is bound by the decree in that suit being a purchaser *pendente lite*; that he can take the eastern one-third in items 1 and 2, but that he can have no portion of No. 3. The plaintiff on the other hand claims one-third in each item according to quality.

The District Munsif held that the plaintiff as a purchaser *pendente lite*, was bound by the decree in suit No. 26 of 1874 and gave him a decree for the eastern one-third in items 1 and 2 and dismissed his claim to No. 3. On appeal the Subordinate Judge held that the doctrine of *lis pendens* applied only to an adjudication on the merits, and not to mere agreements which the parties chose to make during the pendency of the suit. He therefore remanded the suit for trial on the merits. The present appeal is against that order.

The following cases were referred to in argument:—*Munisami* v. *Dakshanamurthi*(1), *Brahannayaki* v. *Krishna*(2), *Kasumunnissa Bibee* v. *Nilratna Bose*(3), and *Jenkins* v. *Robinson*(4).

We are of opinion that the order of the Subordinate Judge is right. The true rule as to *lis pendens* as laid down in *Bellamy* v. *Sabine*(5) is that neither party can alienate the property in dispute so as to affect his opponent, and the foundation for the rule is that it would be impossible any suit should be brought to a

(1) I.L.R., 5 Mad., 371. (2) I.L.R., 9 Mad., 92.
(3) I.L.R., 8 Cal., 79. (4) L.R., 1 Scotch Appeals, 117.
(5) 1 De G. & J., 566.

VYTHI-NADAYYAN v. SUBRAMANYA.

successful termination if alienations, *pendente lite*, were permitted to prevail. Hence it was held that the necessities of mankind require that the *decision of the Court* in the suit shall be binding not only on the litigant parties but also on those who derive title under them by alienations made pending the suit, whether such alienees had or had not notice of the pending proceedings.

According to Roman Law after *litis contestatio*, the subject in dispute became litigious and passed into quasi-judicial custody; but where a suit is compromised by the act of the parties we think the *litis contestatio* has ceased, and the Court performs no judicial function, but only an administrative one in recording the compromise. This is the view taken by Couch, C.J., in *Kailas Chandra Ghose Fulchand Jaharri*(1) and is consistent with the principle laid down by Chelmsford, L.C., and Lord Romilly in *Jenkins* v. *Robinson*(2); see also the use of the terms "contentious suit or proceedings" in section 52 of the Transfer of Property Act.

We therefore confirm the order of the Subordinate Judge and dismiss this appeal with costs.

APPELLATE CIVIL.

Before Mr. Justice Parker and Mr. Justice Shephard.

1889. March 7, 12.

RAMAKRISTNA AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

SUBBAKKA (DEFENDANT), RESPONDENT.*

Hindu Law—Inheritance—Illatam—Burden of proof.

N, a Hindu, who had admittedly been taken as *illatam* into the family of his father-in-law died, leaving property which he had acquired by virtue of his *illatam* marriage. He was succeeded by his son, who died without issue, leaving only a sister surviving him. In a suit by the brother of N, who was the managing member of his family, to recover the property from the sister of the last holder:

Held, that the plaintiff was *primâ facie* entitled to recover, notwithstanding the admission, and that it was for the defendant to establish any special circumstances to rebut his claim.

APPEAL against the decree of L. A. Campbell, District Judge of Nellore, in original suit No. 27 of 1887.

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(1) 8 B.L.R., 474, 489. (2) L.R., 1 Scotch Appeals, 117.

* Appeal No. 136 of 1888.