APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

1891. October 29. 1892. March 2.

VENKATARAGHAVA (PLAINTIFF), APPELLANT,

v.

RANGAMMA (DEFENDANT), RESPONDENT.*

Civil Procedure Code, s. 13—"Res judicata"—*Court of competent jurisdiction—Hindu law—Power of guardian to alienate land—Compromise of litigation.*

In 1882, the daughter of a deceased Hindu brought a suit in the Court of a District Munsif for a declaration that the defendant was not the adopted son of her father (deceased) as he claimed to be. It was found that the alleged adoption was valid and the suit was dismissed.

The then defendant now brought, in 1889, a suit in the same Court to recover possession of land from the then plaintiff, alleging that it had been wrongfully transferred to her by way of gift by his adoptive mother. The defendant denied the adoption and asserted that the transfer was valid as having taken place in accordance with an arrangement made by her father in his lifetime. It was admitted that the value of the whole property, to which the plaintiff was entitled by virtue of his adoption, if it was a valid adoption, exceeded Rs. 2,500.

The Court of First Appeal held that the question of the adoption was not *res judicata*, and observed that the transfer to the defendant was apparently made to induce her to abandon her litigation as to the adoption:

Held, (1) that the defendant was not at liberty to question the plaintiff's adoption;

(2) that the Court should try whether the transfer was made *bonâ fide* by the plaintiff's mother as his guardian for his benefit.

APPEAL against the order of M. B. Sundara Rau, Subordinate Judge of Ellore, in appeal suit No. 208 of 1890, remanding for retrial original suit No. 184 of 1889 in the Court of the District Munsif of Ellore.

Suit to recover possession of certain land. The plaintiff alleged that, during his minority and after the death of his adoptive father, his adoptive mother, in fraud of his rights, conveyed the land by way of gift to the defendant, who was her daughter. The defendant pleaded, *inter alia*, that the plaintiff has not been validly adopted, and that the property had been delivered to her in accordance with an arrangement made by her father.

* Appeal against orde No. 131 of 1890.

The District Munsif held that the question of the plaintiff's adoption was *res judicata* by reason of the decree of his Court passed in a suit (original suit No. 315 of 1882) brought by the present defendant against the present plaintiff to declare the adoption invalid, in which the issue relating to the validity of the adoption was determined in favour of the present plaintiff. It was conceded that the whole property, to which the plaintiff would be entitled by right of his adoption, exceeded Rs. 2,500; and the District Munsif rested his decision partly on the ground that the then plaintiff was estopped from denying the competency of the Court to adjudicate on the matter. He further held that the alienation of the land to the defendant was invalid; and, on these findings, he passed a decree as prayed.

The Subordinate Judge, on appeal, held that the question of the adoption was not *res judicata;* and, as to the second point, he directed the District Munsif to try the following issue :—

"What are the circumstances which led plaintiff's adoptive mother to execute the deed of gift to defendant, and whether or not, she did so, in her capacity as a guardian for minor plaintiff."

The plaintiff preferred this appeal.

Subramanya Ayyar for appellant.

Bhashyam Ayyangar for respondent.

JUDGMENT.—This is an appeal from the order of remand made by the Subordinate Court of Ellore in appeal suit No. 208 of 1890. It is first urged that the Subordinate Judge erred in holding that respondent was at liberty to question the appellant's adoption, though it was upheld as between them in original suit No. 315 of 1882 on the file of the District Munsif of Ellore. We think that this objection must prevail.

In support of his opinion, the Subordinate Judge observes that, prior to the decision in *Ganapati* v. *Chathu*(1), there was an erroneous notion, even among District Munsifs, that a declaratory suit might be instituted, whatever was the value of the property to which it related, in the Court of a District Munsif, and that the respondent's ignorance of law on the subject was excusable, and relies further on the decision of the Privy Council, referred to in *Ganapati* v. *Chathu*(1), and on section 44 of the Indian Evidence Act.

(1) I.L.R., 12 Mad., 223.

VENKATA-RAGHAVA v. RANGAMMA.

But we are unable to agree with the Subordinate Judge that ignorance of law is a valid excuse. Nor do we consider that the decision of the Privy Council has application in a case in which both the prior and the present suits were instituted in the Court of the District Munsif. As for section 44 of the Evidence Act, it does not exclude the operation of the doctrine of equitable estoppel. As plaintiff, the present respondent instituted original suit No. 315 of 1882 in the District Munsif's Court to set aside appellant's adoption and thereby put the Court into motion and the decision pronounced therein is conclusive as to the *factum* and validity of the adoption. The decision of the Subordinate Judge to the effect that respondent is at liberty to re-open the question in the present suit must be set aside.

Another objection taken in this appeal is that the Subordinate Judge was wrong in deciding that the present suit is not governed by the twelve years' rule. It was brought by the appellant to recover certain land from the respondent on the ground that, during his minority, his adoptive mother bestowed it in gift upon the latter, her daughter, without any necessity for so doing, and in view to benefit her at his expense. The right to sue having thus accrued during his minority, the statutory period is twelve years from the date of the gift, under section 7 of the Act of Limitation, unless it expires within three years from the date on which he attained his majority. In this point also the decision of the Subordinate Judge must be set aside and that of the District Munsif restored.

The next question considered by the Subordinate Judge is as to the validity of the gift made to the respondent. If, as observed by him, the transaction was substantially not a mere voluntary act, but one concluded *bonâ fide* by the appellant's mother, as his guardian, in view to adjust the litigation then pending about his adoption, it might be valid. It was, therefore, open to the Subordinate Judge to have stated an issue and remitted it for trial. The issue, however, referred by him must be amended by inserting the words "*bonâ fide*" after the words "did so," and the words "the benefit of" between the words "for" and "the minor plaintiff."

We set aside the order of remand and direct the Subordinate Judge to restore the appeal to his file and to remit for trial an issue amended as indicated above and to dispose of the appeal

with reference to the result of the finding thereon and on the eighth issue.

The respondent will pay the appellant the costs of this appeal.

VENKATA-RAGHAVA v. RANGAMMA.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Parker.

IBRAYAN KUNHI (PLAINTIFF), APPELLANT,

v.

KOMAMUTTI KOYA AND OTHERS, (DEFENDENTS), RESPONDENTS.*

1891. Sept. 2. 1892. April 7.

Civil Courts Act (Madras)—Act III of 1873, *s.* 12—*Declaration of membership of a tarwad—Valuation for the purposes of jurisdiction.*

The plaintiff, alleging that he was karnavan of the defendant's tarwad, sued in a Subordinate Court for a declaration that he was a member of it, adding no prayer for consequential relief. It appeared that the tarwad property exceeded Rs. 26,000, in value, but that the proportionate share of each member, computed as on an equal division, was less than Rs. 900. The Subordinate Judge held that the suit was within the jurisdiction of a District Munsif and rejected the plaint:

Held, that the order was wrong and should be set aside.

APPEAL against the order of C. Gopala Menon, Subordinate Judge of North Malabar, refusing to admit a plaint presented for a declaration that the plaintiff was a member of the defendant's tarwad, and a petition under Civil Procedure Code, s. 622, praying the High Court to revise his order.

It appeared that the tarwad possessed property worth Rs. 26,605 and that it comprised 30 members and it was alleged in the plaint that the plantiff was the karnavan of the tarwad. The Subordinate Judge held the suit was within the pecuniary jurisdiction of a District Munsif, and, on this ground, refused to admit the plaint and returned it for presentation in a proper Court, on the view that the suit should be valued for the purposes of jurisdiction as if it were for a share of the aliquot portion of the tarwad property, which would be allotted to the plaintiff if a partition were made by common consent.

Plaintiff preferred this appeal.

---

* Appeal against Order No. 49 of 1890 and Civil Revision Petition No. 193 of 1890.