AMMAYEE v. YALUMALAI.

question in this case, for we agree with Mr. Justice Wilkinson that the Bombay and Calcutta decisions referred to do not apply to initials of an attesting witness, which stand on an entirely different footing from marks. The Act does not provide that the attesting witnesses should sign in full and we know of no authority for the proposition that initials are not a signature. On the contrary it has been held that they are equivalent to a signature to an acknowledgment under the Limitation Act. In our opinion, if the attesting witnesses affix their initials at the time of witnessing the execution of the will, it is a sufficient compliance with the terms of section 50 of the Indian Succession Act.

[After a consideration of the evidence, their Lordships recorded their finding as follows:—

Upon the whole we must hold that it is not proved that the deceased M. Chinna Cunneappa Chetty signed the will in question being fully aware of its contents and of the nature of what he was doing.]

Narasimhachari, attorney for appellant.

Branson & Branson, attorneys for respondents.

APPELLATE CIVIL.

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

1892. January 11.

MADHAVI (PLAINTIFF), APPELLANT,

v.

KELU AND OTHERS (DEFENDANTS), RESPONDENTS.*

Civil Procedure Code, s. 13—"Res judicata" *between defendants.*

The plaintiff, a junior member of a Malabar tarwad, alleged that the karnavan had assigned to her his kuikanom right over certain land, and that she had obtained a fresh demise from the jenmi and placed a tenant in possession. The tenant was dispossessed by the present karnavan, and in 1886 sued him and the plaintiff to recover possession of part of the land. That suit was dismissed on the ground that the above allegations of the plaintiff were unfounded. She now sued the present karnavan for possession of the entire land:

Held, that the claim of the plaintiff was *res judicata* as far as it related to the land in question in the former suit, but not as to the rest.

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* Second Appeal No. 812 of 1890.

SECOND APPEAL against the decree of J. P. Fiddian, Acting District Judge of North Malabar, in appeal suit No. 747 of 1889, affirming the decree of A. Chatu Nambiyar, District Munsif of Nadapuram, in original suit No. 257 of 1889.

Suit to recover possession of three parambas. The plaintiff and defendants Nos. 1 and 2 were members of the same tarwad, of which defendant No. 1 was the karnavan, and it was alleged in the plaint that the land in question had been demised by the jenmi to a previous karnavan of the tarwad on kuikanom tenure in 1861, and that in 1885 the plaintiff, to whom the karnavan had assigned his rights, obtained a fresh lease of the land and sub-leased it to one Kunhamed, whose possession was subsequently disturbed by Sankaran Adiodi, the new karnavan of the plaintiff's tarwad. It appeared that Kunhamed had sued the last-mentioned karnavan and the present plaintiff in original suit No. 506 of 1886 on the file of the District Munsif of Nadapuram to recover possession of two of the parambas in question. In that suit the karnavan denied the right of the present plaintiff to the land, alleging that there had been no assignment and no lease to her in 1885, and on appeal this contention prevailed and the suit was dismissed. It was now pleaded that the plaintiff's claim was *res judicata*. This plea prevailed in both the lower Courts.

The plaintiff preferred this second appeal.

Sankaran Nayar and *Ryru Nambiar* for appellant.

Sankara Menon, for respondents.

JUDGMENT.—It is argued for appellant that the suit is not barred by *res judicata* because the plaintiff in the former suit was a tenant of present plaintiff, and present plaintiff was only a formal party (second defendant) in that suit, and *Brojo Behari Mitter* v. *Kedar Nath Mozumdar*(1) is quoted in support of this contention. That case certainly does seem to support the appellant's arguments, but the decision in *Venkayya* v. *Narasamma*(2), not dissented from in *Chandu* v. *Kunhamed*(3), is a direct authority for the proposition that a matter may be *res judicata* in a subsequent suit, although the parties in that suit, between whom the matter was decided, were arrayed as co-defendants in the former suit and not as plaintiff and defendant, if the matter in dispute in the second suit formed the subject of active controversy between the co-

(1) I.L.R., 12 Cal., 580. (2) I.L.R., 11 Mad., 204. (3) I.L.R., 14 Mad., 324.

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defendants in the former suit. There can be no question that in the former suit and the present case the question whether the land in dispute was the property of the tarwad of the present plaintiff, then the second defendant, was the subject of active controversy between the present plaintiff and the then karnavan of the tarwad. The present plaintiff's title was put forward by the then plaintiff and actively supported by the present plaintiff. This case comes, therefore, within the principle laid down in *Chandu* v. *Kunhamed*(1) and we must follow the decision of this Court in preference to that of the High Court of Calcutta.

Lastly it is argued for appellant that the plea of *res judicata* applies only to item 2 in the present suit, as the remaining two items were not in dispute in the former suit. It appears that there were only two parambas in question in the former suit, while in this there are three, and the appellant's vakil states that one of the parambas in the former suit is not in question in this. The respondent's vakil can give us no information on this point, and we must, therefore, hold that the whole suit is not shown to be barred by *res judicata* and reverse the decrees of the lower Courts and remand the appeal for decision on the merits with reference to the foregoing observations.

Costs of this appeal to be dealt with in the revised decree.

It has also been argued that the question of *res judicata* could not be decided by the judgment in the former case without the decree, which was not produced. No doubt the decree ought to have been produced, and we direct the District Judge to receive it in evidence at the further hearing of the appeal.

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(1) I.L.R., 14 Mad., 324.