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and conclusive between the parties and cannot be impeached or set aside except in the manner prescribed by the regulation.

Lastly, it is argued that the decision of the Panchayet is invalid on the ground of irregularity of procedure. The only irregularity relied on in appeal is that no notice was given by the District Munsif to plaintiff before nominating the Panchayet.

The regulation does not require such notice; but plaintiff had, as a matter of fact, ample notice of the proceedings. He was duly summoned and informed that the matter was referred to the District Munsif for decision by a District Panchayet within 15 days. He knew, therefore, the time within which the Panchayet must be assembled and it was his business to find out when the nomination of the Panchayetdars was to take place. The truth is the objection on this ground does not lie in plaintiff's mouth at all, for he all along protested against the proceedings and declined to appear or be represented by a Vakil.

We agree with the District Judge that plaintiff has failed to show any valid reason why the Panchayet's decision should be set aside and we confirm the decree of the Lower Court and dismiss this appeal with separate costs of defendants Nos. 1 and 2.

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## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar (Officiating Chief Justice), and Mr. Justice Wilkinson.*

1891. January 29. August 11.

SHANKARAN AND OTHERS (PLAINTIFFS, NOS. 1 TO 14), APPELLANTS,

*v.*

KESAVAN AND OTHERS (DEFENDANTS, NOS. 1 TO 11), RESPONDENTS.*

*Malabar law—Adoption by the last member of a Nambudri illom—Limitation Act —Act XV of 1877, sched. II, arts. 91, 120—Civil Procedure Code, s. 13—"Res judicata."*

In a suit for a declaration that the members of the Nambudri illom to which the plaintiffs belonged were the sole heirs and successors of an illom known as

* Second Appeal No. 179 of 1890.

Kiluvapura, of which the natural line had become extinct, and for possession of certain land which had formed part of its property, the defendants were the karnavan and manager of the plaintiffs' illom and the members of another illom. It was found on the evidence that the plaintiffs' karnavan had been adopted unto the Kiluvapura illom, and that subsequently that illom and the plaintiffs' had been amalgamated under a karar executed by, among others, the wife of the last male-member of the Kiluvapura illom, and that she had died less than twelve years before this suit. The defendants, other than the karnavan and manager of the plaintiffs' illom, asserted a right to a moiety of the property of the Kiluvapura illom (with which, however, it was now found on the evidence that they were less closely connected than the plaintiffs), and it appeared that that right had been similarly asserted in suits brought after the date of the karar above referred to, by a member of the defendants' illom against the karnavan and manager of the plaintiffs' illom, and that decrees had been passed therein negativing the title now set up by the plaintiffs and that part of the property now claimed was held under one of those decrees. The plaintiffs did not ask that those decrees should be set aside:

*Held*, (1) that the suit was not barred by limitation;

(2) that it was unnecessary for the plaintiffs to prove *mala fides* against their karnavan in respect of his conduct in the former suits or to seek that the decrees passed therein be set aside, and that those decrees did not constitute the present claim *res judicata*, as the karnavan was not then impleaded in his capacity as such;

(3) that the adoption of the plaintiffs' karnavan was valid even assuming that no datta homam was performed, and the last male member of the Kiluvapura illom had died after merely indicating him as his heir, and the widow adopted him in the Dwayamushyayana form;

(4) that the plaintiffs were entitled to a decree as prayed.

SECOND APPEAL against the decree of E. K. Krishnan, Subordinate Judge of South Malabar, in appeal suit No. 1089 of 1888, confirming the decree of V. Raman Menon, District Munsif of Angadiprom, in original suit No. 210 of 1887.

The plaintiffs were the junior members of a Nambudri illom called Alakapura, of which defendant No. 10 was the *de jure* karnavan, defendant No. 11 being in actual management. The plaintiffs sought (1) a declaration that the members of their illom were the sole heirs and successors of an illom known as Kiluvapura, of which the natural line had become extinct, and (2) possession of certain land which had formed part of its property.

Defendants Nos. 1 to 9 were members of the Valakunnath illom and as such claimed to be entitled by inheritance to a moiety of the property of the Kiluvapura illom; they denied the plaintiffs' title and pleaded, *inter alia*, that the suit was barred by limitation, and also precluded by Civil Procedure Code, s. 13,

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by reason of the decrees passed in two suits, viz., original suits No. 107 of 1876 and No. 389 of 1878, on the file of the District Munsif of Pattambi.

In original suit No. 107 of 1876 the present defendant No. 1 was the plaintiff, and the present defendants Nos. 10 and 11 were the first and second defendants. The prayer of the plaint was for a declaration of title to and for possession of a moiety of the land now in question. An issue was framed as follows:—"whether plaintiffs and defendants Nos. 1 and 2 have equal claim to Kiluvapura illom." Upon this issue a finding in the affirmative was recorded after contest between the parties; but no decree for possession was passed, because the tenants in actual possession had not been brought on to the record.

Original suit No. 389 of 1878 was thereupon brought by the same plaintiff against the same defendants above referred to and also the tenants in possession. After a similar contest the Court found that the plaintiff had the right claimed by him and accordingly passed a decree for possession which was subsequently executed.

The plaintiffs relied on the facts that they were not parties to those two suits, and that defendant No. 10 had not been impleaded in his character as karnavan; they also charged that the decrees were obtained through the negligence, fraud and collusion of defendants Nos. 10 and 11.

A further question arose upon the following allegations in the plaint, viz., that defendant No. 10 had been adopted into the Kiluvapura illom, and that when he attained his majority he had executed a karar, dated the 21st April 1864, to which defendant No. 11, plaintiff No. 1, and the widow of the last surviving male member of the Kiluvapura illom were some of the parties, whereby it was provided that the properties of the plaintiffs' illom and the Kiluvapura illom should be amalgamated and the two illoms formed into one.

The District Munsif held that the claim in this suit was *res judicata* by the reason of the above decrees and further held that defendant No. 10 had not been adopted as alleged, but that the karar of 1864 constituted a binding agreement, whereby the two illoms were amalgamated and the plaintiffs became the heirs to the property of the Kiluvapura illom.

Upon the first of the above findings the District Munsif dismissed the suit.

This decree was upheld, on appeal, by the Subordinate Judge, who similarly held that the claim was *res judicata*, and also inferred from the evidence that the illoms of the plaintiffs and defendants were related in equal degree to the extinct illom.

The plaintiffs preferred this second appeal.

*Sankaran Nayar* for appellants.

*Sankara Menon* and *Sundara Ayyar* for respondents.

JUDGMENT.—The first contention is that the claim is not *res judicata* by reason of the decree in original suit No. 107 of 1876 or in original suit No. 389 of 1878. The District Munsif distinctly found that the claim was *res judicata* and the Subordinate Judge came to the same conclusion, though he does not refer to the decision in original suit No. 389 of 1878. Having regard to the decision of this Court in *Sri Devi* v. *Kelu Eradi*(1), we are unable to uphold this finding.

The Subordinate Judge has omitted to record any finding on the question of adoption. The plaint distinctly sets forth the adoption, and, if the adoption were true, no question of any reversionary right could arise, and the karar to which the adopted son was a party would prevail.

We must therefore ask the Subordinate Judge to record a distinct finding on the question of the adoption of the tenth defendant on the evidence on record.

As to the relationship the Subordinate Judge refers to certain documents and then observes that, as the illoms of the plaintiffs and contending defendants were found to be related in the same degree to the extinct illoms of Pattoli and Padinharedom, it follows that they were also related in the same degree to the Kiluvapura illom. We are unable to follow this argument. If as is asserted by the plaintiffs that Kiluvapura illom was an offshoot of Alakapura, the reasoning would certainly not hold good.

We must therefore ask the Subordinate Judge to consider the evidence on record and come to a revised finding on the question of relationship. The amalgamation and management of the joint

(1) I.L.R., 10 Mad., 79.

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illoms Alakapura and Kiluvapura by the members of the plaintiff's illom under the karar A was by the consent of the last surviving member of the Kiluvapura illom, who was the widow of Parameswaran Nambudri. She died within twelve years before the suit and possession under her during her life cannot support a claim of title by prescription as against the reversioners.

It is contended by respondents' pleader that the suit is barred by limitation either under article 91 or under article 120. With reference to the decision already cited, plaintiffs were entitled to recover possession in spite of the decrees in original suit No. 107 of 1876 and No. 389 of 1878 on proof of title without also showing *mala fides* on the part of the karnavan.

We do not therefore consider that the omission to ask in the plaint for the setting aside of those decrees can be pressed against plaintiffs.

Findings to be submitted within six weeks from date of receipt of this order, and seven days after posting of the finding in this Court will be allowed for filing objections.

In compliance with the above order, the Subordinate Judge submitted the following finding :—

"My finding is (1) that the tenth defendant is the adopted "son of the deceased Kiluvapura Parameswaran Nambudri and "his wife Shridevi Anderjanom, and (2) that he was more nearly "connected with the Kiluvapura illom than the first to seventh "defendants' Valakunnath illom."

This second appeal coming on for final hearing, the Court delivered judgment as follows :—

JUDGMENT.—The Subordinate Judge finds that the tenth defendant was adopted into the Kiluvapura illom, and that the Kiluvapura illom was an offshoot of Alakapura illom. It is objected that the Subordinate Judge has overlooked exhibit XVIII in which tenth defendant's grandfather, Narayanan Nambudri, stated that the land sued for in original suit No. 417 of 1840 was the property of the Alakapura Padinhare-mana, and it is argued that this recital is strong evidence that the contention of the respondents was well founded. The real contention of the respondents was that Kiluvapura was the parent stock and that the other four illoms were its offshoots. It is true that the Subordinate Judge has not expressly referred to exhibit XVIII, but he bases his finding as to Kiluvapura being an offshoot of Alaka-

pura on evidence, and also shows that for some years past in every transaction between the people of Alakapura and Kilavapura, identity of interest has been assumed. He also finds that the respondents' contention is not supported by the evidence. We therefore see no reason for thinking that the finding of the Subordinate Judge is open to any objection.

With reference to the adoption it is alleged that the finding of the Subordinate Judge is at variance with the case set up in the plaint. The plaintiffs' case was substantially this, that he had by affiliation become a member of the Kiluvapura illom, and even assuming that no datta homam was performed, that Parameswaran Nambudri died after merely indicating the tenth defendant as his heir, and that as found by the Subordinate Judge the widow adopted Kuberan in the Dwayamushyayana form, we see no reason to hold that the adoption was anything but valid. There is a distinct finding of the Subordinate Judge that Kuberan was adopted, and the circumstances may be regarded as mere surplusage. We accept the finding of the Subordinate Judge and setting aside the decrees of the Courts below give plaintiff a decree as prayed for a declaration of their title and for possession of the properties mentioned in exhibit B. As regards mesne profits the finding of the District Munsif was that the annual yield of the land was 30 paras. No objection was taken, on appeal, to this finding, which we therefore accept and decree mesne profits for three years and future mesne profits. The plaintiffs are entitled to their costs throughout.