TIATHA SAMI v. SESHAGIRI PAI.

"consequence of misjoinder of causes of action or of parties or in "consequence of some other reason that prevents the suit being "decided on its merits, would be, I think, to put a wider meaning "on the words used in the statute than would be in accordance "with the principles of interpretation usually applied to the inter- "pretation of modern statutes. I think, though with considerable "hesitation, that the suits should be held to be barred."

The plaintiff preferred this second appeal.

Subramanya Ayyar and *Ramachandra Rau Saheb* for appellant.

Pattabhirama Ayyar for respondents.

JUDGMENT.—Assuming that the suit is one to which the six years' rule applies, we do not think that the plaintiff can take advantage of section 14 of the Limitation Act, inasmuch as his previous suit against the same defendant failed, not by reason of any want of jurisdiction on the part of the Court, but by reason of misjoinder of causes of action and parties. In our opinion that is not a cause of a like nature within the meaning of the section. We are unable to agree with the decision in *Deo Prosad Singh* v. *Pertab Kairee*(1). The Courts of Allahabad and Bombay seem to take the same view as we do.

The appeal is dismissed with costs.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

1892. October 10. 1893. November 23. 1894. February 6.

PALAMALAI PADAYACHI AND ANOTHER (DEFENDANTS, 1 AND 4), APPELLANTS,

v.

SHANMUGA AUSARI (PLAINTIFF), RESPONDENT.*

Hereditary office—(Madras) Regulation VI of 1831, *s.* 3—*Jurisdiction of Revenue Courts.*

A suit for 'Maniam' lands attached to the hereditary office of village carpenter is barred by the operation of section 3 of Regulation VI of 1831.

APPEAL against the decree of R. S. Benson, District Judge of South Arcot, in appeal suit No. 254 of 1890, reversing the decree

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(1) I.L.R., 10 Calc., 86.

* Appeal against Order No. 94 of 1891.

of P. Subramaniya Pillay, District Munsif of Vridhachalam, in original suit No. 694 of 1889.

The plaintiff brought a summary suit against the defendants in the Court of the Head Assistant Collector under Regulation VI of 1831 for the possession of the plaint lands on the ground that he was the carpenter of the village of Kandiyankuppam, and that the lands were 'Maniam' lands attached to his office as carpenter. The Head Assistant Collector found that the defendants' occupation was unlawful, and that the plaintiff, who was the village carpenter, was the proper person to be in possession of them, *i.e.*, of the 'Maniam' lands.

An appeal was made to the Collector, and he confirmed the Head Assistant Collector's decree, but remarked that there was no means of carrying out a decree under Regulation VI of 1831.

On the 23rd August 1889 the plaintiff applied to the Head Assistant Collector to be put in possession in accordance with the decree in the above suit, but the Head Assistant Collector referred the plaintiff to the Civil Court.

The plaintiff then brought his suit in the lower Court to recover possession of the lands and Rs. 30 as mesne profits, but the District Munsif dismissed it on the ground that the land was unenfranchised service inam land and that, under Regulation VI of 1831, claims regarding such lands are not cognizable by Civil Courts.

Plaintiff appealed on the ground that the Revenue authorities having decided the right in plaintiff's favour, the defendants were liable to be ejected, and that the suit, being virtually one to enforce the order of the Head Assistant Collector under the Regulation, was maintainable.

The District Judge decreed in favour of the plaintiff, and the defendants preferred this appeal.

R. Subramanya Ayyar for appellants.

Pattabhirama Ayyar for respondent.

This appeal came on for hearing before Muttusami Ayyar, J., and Wilkinson, J., on the 10th October 1892, when the Court made the following order of reference to Full Bench:—

We are unable to reconcile the decision in *Ravutha Koundan* v. *Muttu Koundan*(1) with the provisions of section 3 of

(1) I.L.R., 13 Mad., 41.

PALAMALAI PADAYACHI v. SHANMUGA AUSARI.

Regulation VI of 1831 and with the decision in the *Collector of Kistna District* v. *Chinnamrazu*(1). The present suit is one for the possession of the emoluments of a certain hereditary office; and such a suit is apparently barred by the operation of section 3, Regulation VI of 1831. We therefore refer the question whether the suit is so barred to the Full Bench.

This appeal having come on for hearing before the Full Bench on 23rd November 1893, the Court delivered the following

JUDGMENT:—This is clearly a suit within section 3 of the Regulation, and we must, therefore, answer the question in the affirmative. There is no necessary conflict between the two cases cited in the order of reference.

This appeal coming on for hearing before a Division Bench consisting of Muttusami Ayyar and Best, JJ., the Court delivered the following

JUDGMENT:—In accordance with the opinion of the Full Bench we set aside the decree of the District Judge and restore that of the District Munsif.

Respondent must pay appellants' costs in this Court and also in the lower Appellate Court.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

1893. October 17.

RAMAN (PETITIONER), APPELLANT,

v.

KUNHAYAN AND ANOTHER (COUNTER-PETITIONERS), RESPONDENTS.*

Execution—Fraud in conducting a sale in contravention of agreement between creditor and debtor—Estoppel of judgment-debtor by previous petition.

The fact that a judgment-debtor, who petitions to have the sale in execution of the decree against him set aside on the ground of fraud and irregularity, has, in a petition made previous to the sale asking for its adjournment, made no mention of the irregularities now relied on does not create an estoppel.

Thakoor Mahatab Deo v. *Leelanund Singh*(2) followed.

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(1) 5 M.H.C.R., 360.

(2) I.L.R., 7 Calc., 613.

* Appeal against Order No. 78 of 1892.