

## APPELLATE CIVIL.

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

GANGARAJU AND OTHERS (DEFENDANTS NOS. 1, 4, 5 AND 6),  
APPELLANTS,

vs.

KONDIREDDISWAMI AND OTHERS (PLAINTIFFS NOS. 1 AND 2,  
AND DEFENDANT NO. 2), RESPONDENTS.\*

*Civil Procedure Code—Act XIII of 1882, s. 13—Res judicata—Rent Recovery Act (Madras)—Act VII of 1865—Decision of a Revenue Court—Second suit in Civil Court—Question of title.*

In a suit for land it appeared that the defendant had obtained, under the Rent Recovery Act, a judgment that the present plaintiff should accept from him a patta for the land in question and deliver to him a corresponding muchalka, and subsequently an order for ejectment, which was executed. The present plaintiff did not appear when the above orders were made. The defendant relied on these proceedings as constituting a bar to the present suit :

*Held, following Rama v. Thyasami (I.L.R., 7 Mad., 61), that the decision of the Revenue Court was no bar to the suit.*

SECOND APPEAL against the decree of M. B. Sundara Rau, Subordinate Judge of Ellore, in appeal suit No. 197 of 1892, confirming the decree of V. Krishnamurthi Pantulu, District Munsif of Tanuku, in original suit No. 95 of 1891.

Suit to recover land with mesne profits. It appeared that on the 6th May 1890 the first defendant, who was the father of the other defendants, brought a summary suit against the present plaintiff under Rent Recovery Act (Madras), 1865, to enforce the exchange of patta and muchalka for the land in question. The present plaintiff did not appear before the Head Assistant Collector who passed an *ex parte* judgment against him. The decision of the Revenue Court was not complied with, and the present first defendant obtained and executed a warrant of ejectment. The present plaintiff moved the Revenue Court to set aside his decision, but this application was rejected on the ground that the summons had been duly served before the case was disposed of. The plaintiff thereupon brought the present suit, alleging that he

\* Second Appeal No. 63 of 1893.

was the owner of the property in question and that the summary decision of the Revenue Court had been obtained in fraud of his rights.

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The District Munsif passed a decree as prayed overruling the contention of the defendant that the decision of the Revenue Court was a bar to the suit. He referred to *Rama v. Tirtasani*(1), *Chunder Coomar Mundal v. Nune Khanum*(2), *Debi Prasad v. Jafar Ali*(3), *Boistub Churn Sein v. Trahee Ram Sein*(4), *Manappa Mudali v. McCarthy*(5), *Venkatachalapati v. Krishna*(6).

On appeal the Subordinate Judge affirmed this decree. The defendants preferred this second appeal.

*Srirangachariar* for appellants.

*Venkatarama Sarmu* for respondents.

JUDGMENT.—Assuming that the suit was maintainable there can be no doubt that the decision is correct on the facts found.

It is contended, however, that the suit is not sustainable by reason of the decree in summary suit No. 72 of 1890 on the file of the Head Assistant Collector and of the order for ejectment under section 10 of Act VIII of 1865 (Madras).

The first plaintiff did not appear to defend that suit and a subsequent application of his to have the *ex-parte* decree set aside was dismissed. Hence the present suit on title.

As was held in *Rama v. Tirtasani*(1) the decision of a question of title by a Revenue Court is merely incidental, and no bar to a fresh suit on title in a Civil Court. Our attention has been called to the decision in *Ragava v. Rajagopal*(7). The learned Judges who decided that case held that the decision and order of a Revenue Court under section 10 of Act VIII of 1865 would bar a subsequent suit on title in the Civil Courts. But it does not appear that the decision in *Rama v. Tirtasani*(1) was brought to their notice. We are of opinion that the principle laid down in *Rama v. Tirtasani*(1) is correct.

We, therefore, dismiss this appeal with costs.

(1) I.L.R., 7 Mad., 61.

(3) I.L.R., 3 All., 40.

(5) I.L.R., 3 Mad., 192.

(7) I.L.R., 9 Mad., 39.

(2) 11 B.L.R., 434.

(4) 15 W.R., 32.

(6) I.L.R., 13 Mad., 291.