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The reasoning in the Bombay case commends itself to me. I am not aware of any decision of this Court, which is inconsistent with the view that article 147 is applicable to the case now before us.

In reply to the reference I would say that the suit is governed by article 147.

DAVIES, J.—I concur with BENSON, J.

PRIVY COUNCIL.

SRI RAJA RAU LAKSHMI KANTAIYAMMI (DEFENDANT)

v.

SRI RAJA INUGANTI RAJAGOPAL RAU (PLAINTIFF).

[On appeal from the High Court at Madras.]

Decree explained by reference to the judgment—Title of nearest reversioner.

In a prior suit a decree of the High Court awarded to the plaintiff the substantial relief claimed by him as reversionary heir entitled to inherit after the mother of the last male owner, then deceased, she holding her limited estate in the property; and the decree declared that certain alienations made by her were invalid against the reversionary heir.

In the present suit the same plaintiff, as nearest reversioner, claimed possession of the property from the daughter of the mother, the latter having died since the prior suit; the daughter alleging title through her:

Held, that the judgment, in the prior suit, was admissible, and ought to be examined in the present suit, in order to see what that suit decided as to the reversioner's title.

Kali Krishna Tagore v. Secretary of State for India (L.R., 15 I.A., 186; s.c., I.L.R., 16 Calc., 173) referred to and followed.

The judgment showed that the question whether the plaintiff was the nearest reversioner having been raised in the prior suit, had been finally determined in the affirmative; and this was sufficient proof of his title in the present suit.

APPEAL from a decree (15th March 1892) of the High Court, affirming a decree (19th December 1890) of the District Judge of Vizagapatam.

The present suit was brought on the 18th April 1888 by the respondent to establish his right to possess three proprietary estates in the Vizagapatam district, with mesne profits since 1886.

* *Present*: Lords HOBHOUSE, MACNAGHTEN and MORRIS, and Sir R. COUGH.

The last male owner was Rayadappa, who died in 1861, childless and unmarried. On his death his mother Sitaiyammi inherited these estates for the limited interest which she could possess, and she died on the 4th April 1886. On her death her daughter Kantaiyammi, defendant in this suit and now appellant (being sister of the late Rayadappa), obtained possession of the estates alleging her right to the inheritance.

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The plaintiff, respondent, claimed to be the nearest surviving reversionary heir of Rayadappa and thus entitled.

He was, in fact, the adopted son of Rayadappa's first cousin Sitaramasami, who was son of the brother of Rayadappa's father.

Sitaramasami died in 1877, during the pendency of a suit which he brought in 1869 against the widow and mother Sitaiyammi, for a declaration of his reversionary right to the same properties, for which his adopted son, Sri Raja Inuganti Rajagopal Rau, now sued; and Sitaramasami in that suit of 1869 sued to have declared invalid, as against himself, certain alienations which Sitaiyammi had made. She defended that suit on the ground that all the properties, except one, were her stridhanam, that they never had been part of the paternal estate of her late husband, the father of Rayadappa, and that her daughter, and her daughter's adopted son were entitled to succeed to them after her own death. That suit of 1869 was not decreed till the 2nd May 1882, when Sitaramasami had been dead nearly five years, and by that time his minor adopted son above mentioned had been substituted for him, at the instance of the Court of Wards in charge of the minor's estate. The decree of the 2nd May 1882 was the basis of the present suit, in which the plaintiff's claim, he having arrived at majority, was founded exclusively on the assertion that his right to immediate possession on the death of Sitaiyammi was, in that suit, finally determined and settled as between himself and the present defendant, appellant.

The question on this appeal was whether the plaintiff's title as the nearest reversioner had been substantially in issue and finally determined in the prior suit of 1869; and, in connection with this, whether the judgment of 1882 could be referred to as affording explanation as to the title, and its grounds, the decree of that year saying nothing further than to declare him, as the representative of the original plaintiff in that suit, to be reversioner.

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The particulars of the claim of 1869 of the defence made, and of the judgment and decree thereon, as well as all the facts material to the decision of this case, are given in their Lordship's judgment.

The District Judge decreed to the plaintiff the properties that had belonged to the deceased Rayadappa on the ground of the plaintiff's having been his nearest surviving sapinda at his death, as determined in the prior suit of 1869, the matter being, in the Judge's opinion, 'res judicata.'

On an appeal to the High Court by the daughter Kantaiyammi, a Divisional Bench (COLLINS, C.J., and PARKER, J.) affirmed the judgment of the First Court.

Referring to the present plaintiff having been substituted for his adoptive father in the prior suit, the Judges said that his adoption having been questioned in the proceedings in that suit, an issue was sent down on 15th April 1880 with the result that his adoption was found to be proved. They added that the appeal in that suit came on for final hearing on the 2nd May 1882, when the Advocate-General who appeared for Kantaiyammi admitted that the objection to the adoption could not be sustained; their judgment continuing thus—

"The High Court then held that it had not been shown that there was any nearer reversioner than the present plaintiff, and granted him a decree declaring that the alienations made by Sitaiyammi to four different defendants were ineffectual to bind the reversioner. The first point urged upon the Court is that the question of the plaintiff's adoption is not 'res judicata' as between the parties, and that he should be required to prove it. It is contended that under section 357, Civil Procedure Code, two courses are open to the Court when a dispute arises as to who is the legal representative of the deceased plaintiff, *i.e.*, the Court may either stay the suit until the fact has been determined in another suit, or may decide the point at or before the hearing. In this case the latter course was taken, and as the issue was tried by a Court of competent jurisdiction between the same parties litigating under the same title, we can see no reason why the question between them should not be 'res judicata' under section 13. We may point out that an appeal is provided from the order under section 367 by section 588, clause 18, which is sufficient to show that the order is not a mere

“interlocutory determination of a point necessary to be decided
“in order that the suit may proceed.

“It is then urged that the plaintiff's title as reversioner to the
“whole estate is not ‘res judicata’ by the decree in Appeal No. 96
“of 1875, but only as to those portions of which the alienations
“were held not binding. It is pointed out that no declaration was
“given as to plaintiff's right to succeed as reversioner to the rest of
“the estates. As to this objection we may observe that no such
“declaration could have been given. There was no right to conse-
“quential relief with regard to the rest of the estate and therefore
“no declaratory decree could be made (*Katham Natchiar v.*
“*Dorasinga Tever*(1). We are of opinion, however, that the
“contention of ‘res judicata’ does not rest upon the fact that
“the subject-matter in this suit is the same as that in the former,
“but because of the issues and the findings thereon. The question
“(1) of the plaintiff's adoption and (2) as to whether the estates
“were Sitaiyammi's stridhanam or her husband's property were
“necessary issues in the former suit and they were decided. The
“decision upon these issues was necessary, even though the right
“to consequential relief and the declaration to be given there-
“upon only related to portions of the estates. Independently of
“this, however, we should still be of opinion that the first defend-
“ant had altogether failed to prove that these estates were her
“mother's stridhanam property.”

Mr. *J. D. Mayne*, for the appellant, argued that the decree of 1882 had not definitely declared the plaintiff's title, as nearest reversioner, to the possession immediately upon the death of Sitaiyammi; and that the Courts below should not have decided in favour of the present respondent without having given to the appellant an opportunity of contesting, on the merits, her opponent's title. The High Court was in error in assuming that the decree of 1882, by implication, awarded such an immediate right of possession. There was little, if anything, in the judgment in the suit that could be said to go beyond what was specified in the decree; which, in result, affirmed only the right of the reversioner not to be affected by the alienations made by the widow, who for her life represented the estate. It did not attempt to fix the direct right of possession in the reversioner, now respondent,

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(1) L.R., 2 I.A., 169 at p. 191.

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immediately consequent upon the termination of the limited interest, or interests preceding his right of inheritance. It fell short of establishing the present claim.

There had been no decision in the suit of 1869, whether the daughter was, or was not, entitled to possession after the death of her mother in priority to the cousin of her deceased brother. The judgment and decree of 1882 might be correct, but the construction that the judgment covered the respondent's claim to proprietary possession, immediately upon the death of the mother, was open to dispute. The daughter's claim to succeed had not been the subject of adjudication, and was not necessarily affected by that decision. It was for the respondent to establish in the present suit his title to possession against the appellant, and there was no sufficient ground for the construction that the declaration of the reversionary title carried with it the right to the possession. A succession of limited interests might intervene before the latter right, and was quite compatible with the existence of a reversionary title. Reference was made to *Kathama Natchiar v. Dorasinga Tever*(1).

Mr. *J. H. A. Branson*, for the respondent, contended that all that was necessary to show a complete title in the respondent to the possession of the property upon the death of Sivarammi was to be found in the judgment and decree of the High Court in 1882. That Court, upon all the facts, was in concurrence with, and had affirmed, the decision of the First Court. No part of what would belong to the plaintiff's case, if it were incumbent on him again to prove it, could be said to be additional to what had been established in the suit of 1882, so far as the plaintiff's title was concerned. The judgment of that year amounted to this, that the respondent in this case was entitled to the property as the nearest surviving male sapinda of Rayadappa, the last male owner. It had not been shown that any of the findings below were open to doubt, and on reference to the judgment it was clear that the same issue was raised then that was raised now. The plaintiff's title as nearest reversioner had been conclusively established by the judgment and decree of 1882.

Mr. *J. D. Mayne* replied.

Afterwards, on the 5th March, their Lordships' judgment was delivered by Sir RICHARD COUCH.

(1) L.R., 2 I.A., 169 at p. 191.

JUDGMENT.—The only question in this appeal is what is the effect of a decree of the High Court at Madras made on the 2nd of May 1882 in a suit brought by Sitaramasami against Sitaiyammi, the mother and heiress of Rayadappa deceased, who was the son of Ramarayanin, and had died unmarried and without issue. Sitaramasami was the son of a younger brother of Ramarayanin, and the plaint, which was filed in April 1869 in the Civil Court of Vizagapatam, alleged that the plaintiff was the nearest surviving heir of Rayadappa, and stated that the relief sought for was a declaration of the plaintiff's right to succeed after the death of Sitaiyammi to the enjoyment of the immovable property described in the plaint and the annexed schedule, and a declaration that the alienations of parts of the property which had been made by Sitaiyammi to the prejudice of the reversionary right of the plaintiff to a number of persons who were also made defendants might be declared invalid or to be of no effect beyond her life. The plaint also asked for an injunction and the appointment of a receiver. The written statement of Sitaiyammi alleged that the whole of the property, except a garden, which had been granted to her son by the Zamindar of Bobbili, was her stridhan, and the estate was managed for her by her husband and son, and even if it was considered to be the acquisition of her husband, her daughter and her daughter's son were entitled to succeed to it and the plaintiff was not entitled to it in any respect. The other defendants by their written statements asked that the suit might be dismissed. At the hearing before the Civil Judge of Vizagapatam he found that the families of the brothers were divided, and the property was not the stridhan of Sitaiyammi and was the self-acquired property of Ramarayanin, and therefore that the plaintiff was not reversionary heir and decreed that the suit should be dismissed.

Sitaramasami having adopted the present appellant before the hearing, he had been substituted in the suit as plaintiff and he appealed against this decree to the High Court at Madras on the ground, among others, that the Court below ought to have found that he was entitled to the property on the death of Sitaiyammi as heir of her son, the last full owner. It has been seen that Sitaiyammi alleged that her daughter and her daughter's son and not the plaintiff were entitled to succeed. The daughter is the present appellant and on the suit being remanded by the High Court to the Lower Court to enable them to be made parties to the

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suit that was done, and the Judge made a final decree declaring the adoption of the son to be invalid and again dismissing the suit. On the appeal again coming before the High Court it delivered the following judgment:—"The Advocate-General admitted that the finding as to the adoption of the substituted plaintiff could not be sustained, and that the only question remaining for disposal was whether on the facts which have been found or are no longer disputed the plaintiff is entitled to any portion of the relief sought. It is not shown that there is any other nearer reversioner than the plaintiff and we are unable to distinguish this case from others in which it has been held that a reversioner is entitled to a declaration that the acts of a Hindu lady in possession in excess of her authority will not bind the reversion if a case is made out for such relief." Then after saying that the Advocate-General had argued that no such case was averred or had been established the judgment says:—"He (the plaintiff) will obtain a decree declaring these alienations ineffectual to bind the reversion. He has not established any necessity for the appointment of a receiver and the issue of an injunction to a lady in possession who may alien a property for proper purposes would not be justifiable except under extraordinary circumstances. The residue of the claim is, therefore, dismissed." "Therefore" refers to the reasons given in the preceding paragraph and "residue of the claim" means the appointment of a receiver and an injunction. The other questions in the suit are in their Lordships' opinion decided in favour of the plaintiff. The decree declares the plaintiff entitled to the substantial relief claimed in the plaint, and although it does not contain a declaration that the plaintiff is the nearest reversioner the judgment may be and ought to be looked at to see what was decided. The present appellant in her written statement after she had been made a defendant alleged that she and her son would be the heirs after her mother's death, and that the respondent could not be the heir. The suit being dismissed by the District Judge the plaintiff appealed to the High Court, one of his grounds of appeal being that, on the death of Sitaiyammi, he was entitled to the property as the heir of her son. The question whether he was the nearest reversioner was thus distinctly raised.

Sitaiyammi died on the 4th of April 1886, and thereupon her daughter, the present appellant, took possession of the property. On the 18th of April 1888 the respondent brought a suit against

the appellant and other persons, the heirs and representatives of deceased defendants in the original suit, to recover possession. The defence set up by the appellant in her written statement is that the respondent's right as the nearest reversionary heir had not been established by the decree in the suit of 1869, and he was therefore not entitled to recover the estates. The District Judge, on the 19th of December 1890, found that the respondent was the reversioner, and made a decree for possession against the first defendant Kantaiyamma, the appellant, and dismissed the suit against all the other defendants. Kantaiyamma appealed to the High Court on the ground that the Lower Court was wrong in deciding the plaintiff's title without framing an issue on that point and in holding that the decree in the suit of 1869 had in any way declared the title of the plaintiff. This has been the contention before their Lordships of the learned counsel for the appellant. And if only the decree could be looked at there might be some reason for it, but it would be wrong to look only at the decree. In *Kali Krishna Tagore v. Secretary of State for India*(1), the High Court of Bengal did this saying:— "We cannot look to the judgment as we were asked to do in order to qualify the "effect of the decree," and their Lordships on appeal held that in order to see what was in issue in a suit or what has been heard and decided, the judgment must be looked at. They said:—"The "decree, according to the Code of Procedure, is only to state the "relief granted, or other determination of the suit. The determination may be on various grounds, but the decree does not show "on what ground, and does not afford any information as to the "matters which were in issue or have been decided." It is plain that in the suit of 1869 it was decided by the High Court that the respondent was the nearest reversionary heir. That is conclusive between him and the appellant, and is sufficient proof of his title to enable him to recover possession of the property from her. Their Lordships will, therefore, humbly advise Her Majesty to affirm the decree of the High Court and dismiss the appeal. The appellant will pay the costs of it.

Appeal dismissed.

Solicitors for the appellant—Messrs. *Surr, Gribble & Oliver*.

Solicitors for the respondent—Messrs. *Lawford, Waterhouse & Lawford*.

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