

only supported the then plaintiff but took an active part in the controversy and was represented by a wakil in all stages of the suit, both in the Courts below and in the High Court.

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ZAMORIN
OF CALICUT.

We therefore hold that there was an adjudication in the suit between the then sixth and first defendants, that the latter had acquired a title by adverse possession, and this was the ground on which the then plaintiff's suit was dismissed.

Following the decisions of this Court in *Madhavi v. Kelu*(1) and *Zamorin of Calicut v. Narayanan Mussad*(2), we hold that that adjudication is *res judicata* against the plaintiff in the present suit, who is the successor in title of the then sixth defendant, and in favour of the present second defendant, who is the appellant before us.

We may point out that there is no conflict between the two decisions of this Court referred to above and the case in *Ramanuja Ayyangar v. Narayana Ayyangar*(3) as supposed by the Subordinate Judge, inasmuch as there was no conflict on the pleadings of the co-defendants in the latter case, and, in fact, both of them jointly opposed the plaintiff.

We set aside the order of remand of the lower Appellate Court and restore the decree of the District Munsif with costs in this and in the lower Appellate Court.

APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Moore.

IN THE MATTER OF PONNUSAMI AND ANOTHER, ACCUSED.*

1901,
October 24.

Criminal Procedure Code Act V of 1898. s. 4 (c); and the Cattle Trespass Act I of 1871, ss. 20, 22—Appeal lies against order made under s. 22 of the Cattle Trespass Act.

By section 4 (c) of the Code of Criminal Procedure, the word 'offence' includes an act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act; and a person against whom an order under section 22 of the Cattle Trespass Act is made is a "person convicted on a trial" and is entitled to appeal under section 407 of the Code of Criminal Procedure.

(1) I.L.R., 15 Mad., 234.

(2) I.L.R., 22 Mid., 323.

(3) I.L.R., 18 Mad., 374.

* Case Referred No. 108 of 1901 (Criminal Revision Case No. 384 of 1901) for the orders of the High Court under section 438 of the Code of Criminal Procedure by E. A. Elwin, Esq., District Magistrate of South Arcot, in his letter dated 9th October 1901.

IN THE
MATTER OF
PONNUSAMI,

THE facts of this case are set out in the Letter of Reference from the District Magistrate of South Arcot which was as follows:—

The entertainment of an appeal against an order passed under section 22 of the Cattle Trespass Act appears to be illegal under the High Court's Proceedings, No. 2113, dated 27th November 1879, printed at pages 676 and 677 of Weir's 'Criminal Rulings' (3rd edition), and I therefore recommend that the Deputy Magistrate's order may be set aside.

The Deputy Magistrate explains that he entertained the appeal under the impression that the award of compensation by the Sub-Magistrate was subject to appeal under section 250, Criminal Procedure Code, and that he was not aware of the above ruling of the High Court.

ORDER.—The District Magistrate has overlooked the change that has been made in the definition of an 'offence' since the ruling of the High Court to which he refers was made. By section 4 (c) of the Criminal Procedure Code as now revised the word 'offence' includes an act in respect of which a complaint may be made under section 20 of the Cattle Trespass Act. It follows that a person against whom an order under section 22 of the Cattle Trespass Act is made is a "person convicted on a trial." In the present case the accused were "convicted on a trial" by a Magistrate of the third class.

An appeal against that conviction therefore lay under section 407, Criminal Procedure Code, and there is no ground for our interference.

We may add that the Deputy Magistrate was wrong in supposing that he was acting, or had any jurisdiction, under section 250, Criminal Procedure Code. That section applies to a case in which compensation is awarded to an accused person, because a frivolous complaint has been made against him. Here compensation was awarded not to the accused but to the complainant, and it was awarded under section 22 of the Cattle Trespass Act, not under section 250, Criminal Procedure Code.

We may also point out to the District Magistrate that in a reference of this kind the essential facts should be briefly stated in the Letter of Reference instead of being left to be gathered by the High Court from a perusal of the record.