APPELLATE CIVIL—FULL BENCH.

Before Sir Arnold White, Chief Justice, Mr. Justice Subrahmania Ayyar and Mr. Justice Davies.

PANCHANADA VELAN (PLAINTIFF), APPELLANT,

v.

VAITHINATHA SASTRIAL AND OTHERS (DEFENDANTS NOS. 1 TO 6, AND 8 TO 16, AND LEGAL REPRESENTATIVES OF THE DECEASED SEVENTH DEFENDANT), RESPONDENTS.*

1905 February 24, November 9, 10.

Civil Procedure Code—Act XIV of 1882, s. 13—Res judicata—Decrees in cross-suits on same facts—Appeal against one decree only—Decree unappealed no bar to the decision of the appeal.

Where cross-suits between the same parties on the same facts were tried together and judgment was given on the same day but separate decrees were passed and an appeal was preferred against one of the decrees alone:

Held, that the decree unappealed did not operate as a bar under section 13 of the Code of Civil Procedure so as to preclude the Appellate Court from dealing with the decree appealed against.

The doctrine of *res judicata* has no application when the very object of the appeal, in substance if not in form, is to get rid of the decision which is pleaded in bar.

Abdul Majid v. *Jew Narain Mahto*, (I.L.R., 16 Calc., 233), followed.

SUIT by a tenant under the Madras Rent Recovery Act to compel the tender of a putta by the landlord. A cross-suit was filed in the same Court by the landlord to compel the tenant to accept the putta and execute a muchilika for the same fasli.

The further facts necessary for this report are stated by (Subrahmania Ayyar and Boddam, JJ.), in the order of reference to the Full Bench.

ORDER OF REFERENCE TO A FULL BENCH.—In this case the appellant brought Summary Suit No. 35 of 1901 against the respondents to compel them to grant a putta for fasli 1310. Subsequently, the respondents instituted, before the same Revenue Court, Summary Suit No. 317 of 1901 against the appellant for compelling the acceptance by the appellant of a putta for the same year. The questions at issue in both cases were identical, viz., as to

*Second Appeal No. 997 of 1903, presented against the decree of F.D.P. Oldfield, Esq., District Judge of Tanjore, in Appeal Suit No. 160 of 1902, presented against the decision of M.R Ry. A. Ramacha Nedungadi, Deputy Collector of Pattukotai Division, in Summary Suit No. 35 of 1901.

PANCHANADA VELAN v. VAITHINATHA SASTRIAL.

the terms of the putta for the year. The suits were tried together and judgment given on the same day (the 24th December 1901). The decree to be passed in each suit was in effect the same. That, however, was not the course followed by the Court, for Summary Suit No. 35 of 1901 was dismissed, while Summary Suit No. 317 of 1901 was decreed, the terms of the putta being in accordance with judgment in the two cases The appellant preferred an appeal against the decision of the Revenue Court describing the appeal as one made against the decree in Summary Suit No. 35 of 1901. In the appeal memorandum he made no reference to the decree in Summary Suit No. 317 of 1901, nor did he prefer a separate appeal in the circumstances against the latter. After calling for certain findings to which it is unnecessary to refer, the District Judge has dismissed the appeal of the appellant in Summary Suit No. 35 of 1901 on the ground that the decision of the Revenue Court in Summary Suit No. 317 of 1901 not having been appealed against, he, the District Judge, was precluded from determining the questions raised in Summary Suit No. 35 of 1901, to which the appeal before him related. His view, it is said, receives support from the conclusion in *Gururajammah* v *Venkatakrishnamma Chetti*(1), viz, that the test with regard to questions of *res judicata* is whether the decision relied on as *res judicata* is in point of date prior to trial or finding which is sought to be avoided, without reference to the question which of the two suits was first instituted. *Abdul Majid* v *Jew Narain Mahto*(2) is on all fours with the present case and according to that decision the view adopted by the District Judge is wrong. Though we may distinguish the present case from the decision in *Gururajammah* v. *Venkatakrishnamma Chetti*(1) on the ground that here the judgment of the Revenue Court was on the same date while it was otherwise in *Gururajammah* v. *Venkatakrishnamma Chetti*(1), we think it more satisfactory to submit the point for the decision of a Full Bench, and we accordingly state the following question for their opinion, viz.

Whether the District Judge was precluded from deciding upon the merits the questions raised before him in the appeal in Suit No. 35 of 1901 by the judgment of the Revenue Court in Suit No. 317 of 1901, no appeal having been preferred against the decision in the latter suit.

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(1) I.L.R., 24 Mad., 350 at p. 355. (2) I.L.R., 16 Calc., 233.

The case came on for hearing in due course before the Full Bench constituted as above.

K. S. Ramaswami Sastri for S. *Gopalasami Ayyangar* for appellant.

T. Subrahmania Ayyar for the Hon. Mr. *P. S. Sivaswami Ayyar* for Nos. 1 to 15 respondents.

The Court expressed the following

OPINION.—Technically, no doubt, the tenant's appeal ought to have been in both suits and the proper course for the District Judge to have taken would have been to require the appellant to amend his memorandum of appeal so as to make it an appeal in both suits; but the fact that the tenant only appealed in his own suit and did not prefer an appeal in the landlord's suit did not preclude the District Judge from deciding upon the merits the questions raised in the appeal which was before him. The subject-matter of the litigation in the two suits was the same, the evidence was the same, and the two suits were tried together. The reasons for which the tenant's suit was dismissed were the reasons for which judgment was given in favour of the landlord in his (the landlord's) suit.

We do not think that, either under section 13 of the Civil Procedure Code, or on general principles, the doctrine of *res judicata* has any application to the facts of this case. The doctrine does not apply when, as here, the very object of the appeal, in substance if not in form, is to get rid of the adjudication which is said to render the question which the Appellate Court is asked to decide *res judicata*. The tenant's appeal in his suit if successful would have the effect of superseding the adjudication in the landlord's suit. See the judgment of the Full Bench in *Jogesh Chunder Dutt* v. *Kali Churn Dutt*(1). It is not necessary to consider what might be the exact legal effect of such a supersession. All we have to decide in the present case is whether the Appellate Court was precluded from dealing with the appeal by reason of the doctrine of *res judicata*.

It would lead to startling results if we were to hold that an Appellate Tribunal is precluded from dealing with a question which comes before it on appeal because an inferior Court, upon the same facts, but in a case other than the case under appeal, had given a

(1) I. L. R., 3 Calc., 30.

PANCHANADA VELAN v. VAITHINATHA SASTRIAL.

decision which had not been appealed against, at the same time as the decision in the case under appeal.

We think *Abdul Majid* v. *Jew Narain Mahto*(1) was rightly decided.

Our answer to the question referred to us must be in the negative.

The appeal came on for final hearing before (Subrahmania Ayyar and Boddam, JJ.), when the Court delivered the following

JUDGMENT.—According to the decision of the Full Bench, we set aside the decree of the District Judge and remand the appeal to the lower Court for disposal according to law. Costs will abide and follow the event.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arnold White, Chief Justice, Mr. Justice Subrahmania Ayyar and Mr. Justice Benson.

1904 August 5, 1906. February 6, 7, March 9,

KURRI VEERAREDDI AND OTHERS (DEFENDANTS NOS. 1 TO 3 AND 10 AND LEGAL REPRESENTATIVES OF THE TENTH DEFENDANT), APPELLANTS,

v.

KURRI BAPIREDDI AND ANOTHER (PLAINTIFF AND HIS LEGAL REPRESENTATIVE), RESPONDENTS.*

Transfer of Property Act IV of 1882, *s.* 54-*Enforceable contract of sale followed by delivery of possession to defendant, but not followed by registered sale-deed no defence to suit for possession—Construction of statute.*

The provisions of section 54 of the Transfer of Property Act are imperative, and Courts will not be justified in disregarding them on equitable grounds.

Where the words of a statute are clear and unambiguous, effect must be given to them, although hardship may result in individual cases.

A contract of sale followed by delivery of possession does not, when there is no registered sale, create any interest in the property agreed to be sold and

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(1) I. L. R., 16 Calc., 233.

* Second Appeal No 1033 of 1902, presented against the decree of M.R.Ry. I. L. Narayana Rao, Subordinate Judge of Kistna at Masulipatam, in Appeal Suit No. 791 of 1901, presented against the decree of M.R.Ry. V. Subramaniam Pantulu, District Munsif of Guntur, in Original Suit No. 640 of 1899.