

VANMIKA  
LINGA  
MUDALI  
v.  
CHIDAM-  
BARA  
CHETTY.

property mortgaged to him as is not comprised in the mortgage to the fifth defendant, will be sold and the proceeds applied in payment of what is due to the plaintiff. If the amount due to the plaintiff is not fully discharged thereby, the remainder of the mortgaged property shall be sold and the proceeds applied in the first instance towards the discharge of the fifth defendant's mortgage amount, viz., Rs. 750 and his costs throughout and the surplus, if any, applied so far as may be necessary in paying off the remainder of the plaintiff's claim. The decrees of the lower Courts will be modified accordingly.

*In second appeal No. 347 of 1903.*—For like reasons a similar decree will be passed in Second Appeal No 347 of 1903.

## APPELLATE CIVIL.

*Before Sir S Subrahmania Ayyar, Officiating Chief Justice, and  
Mr. Justice Sankaran Nair*

JALASUTRAM LAKSHMINARAYAN AND OTHERS (DEFENDANTS),  
APPELLANTS,

v.

BOMMADEVARA VENKATA NARASIMHA NAIDU  
(PLAINTIFF), RESPONDENT.\*

1905  
August  
16, 29.

*Civil Procedure Code—Act XIV of 1882, s. 13—Res judicata must be based  
on the grounds stated in the judgment.*

A plea of *res judicata* must be based on the grounds of the decision actually stated in the judgment; and where such grounds are unequivocally stated but do not justify the decision, it is not proper or competent to substitute something else quite different which will justify it to enable one of the parties to found a plea of *res judicata*.

THE facts necessary for this report are set out in the judgment.

*G. Ramachandra Rau Sahib* for appellants.

*V. Krishnaswami Ayyar* for respondent.

\* Civil Miscellaneous Appeal No. 224 of 1904, presented against the decree of F. H. Hamnett, Esq., District Judge of Godavari, in Appeal Suit No. 571 of 1903, presented against decree of M.R. Ry. T. A. Narasimha Chariar, District Munsif of Bhimavaram, in Original Suit No 485 of 1903.

JUDGMENT.—The present suit is for the recovery of kattubadi for faslis 1308 to 1310 stated to be due to the plaintiff, the Zamindar, by the defendants, in respect of certain inam lands held by them in the zamindari. The District Munsif dismissed the suit on the ground that the present claim was *res judicata* by the decision in Appeal Suit No. 20 of 1900, but the District Judge reversed the decree being of opinion that there was no *res judicata*.

J. LA.  
SUTRAM  
LAKSEMI.  
NARAYAN  
v.  
BOMMA-  
DEVARA  
VENKATA  
NARASIMHA  
NAIDU.

We think the District Judge is right. In the previous suit, in which the appeal decision referred to above was given, the present plaintiff sought to recover from the present defendants the kattubadi for the same inam for eleven faslis from 1295 to 1305. No papers connected with the original trial of the former suit have been placed on the present record; and what were the several issues framed and tried at such original trial, does not appear. In the appellate judgment, the only document filed, the Judge after stating that "the defence was *inter alia* that the suit was barred by limitation and this question is the only one which need be considered in the appeal" gave a finding in the affirmative basing his conclusion upon the single circumstance that the plaintiff had not proved that he had collected any kattubadi within 12 years prior to the date of the suit. In thus disposing of the case the Judge did not quote the article of the Limitation Act according to which he held the claim barred. The argument on behalf of the appellant is that, the decision in the appeal judgment quoted, should be taken as if the Court had raised for its determination, the issue, whether the plaintiff's right to collect kattubadi had as a *periodically recurring right*, become barred under article 131 of the schedule to the Limitation Act and found upon that question against the plaintiff. Now with reference to the issue thus suggested, it would have been necessary for the Court to have determined whether the plaintiff was *refused* the enjoyment of the right 12 years previously to the suit. The mere fact that no kattubadi had been collected for 12 years by the plaintiff, did not necessarily imply, that such non-collection was in consequence of a denial of the plaintiff's right to the kattubadi, and the finding in the appeal judgment relied on is thus, in fact, not one which would have determined the point essential for the adjudication of the question in regard to article 131. Surely it is neither competent nor proper for us to depart from the unequivocal statement in the judgment as to what was decided and, because such decision would by itself be unsound with reference to the

JALA-  
SUTRAM  
LAKSHMI-  
NARAYAN  
v.  
BOMMA-  
DEVARA  
VENKATA  
NABASIMHA  
NAIDU,

reason assigned for it, to substitute something else quite different in order to make it seem right so as to enable one of the parties thereto to found a plea of *res judicata* thereon.

The contention fails and the appeal is dismissed with costs.

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## APPELLATE CIVIL.

*Before Sir S. Subrahmania Ayyar, Officiating Chief Justice, and  
Mr. Justice Sankaran Nair.*

SUBRAYA PRABHU (PLAINTIFF), APPELLANT,

v.

MANJUNATH BHAKTA (DEFENDANT), RESPONDENT.\*

1905  
August 23.

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*Arbitration—Award to be filed in Court having jurisdiction over the matter submitted—Award not invalidated by want of notice nor by the arbitrators accepting a fee—Jurisdiction.*

The omission to give notice of the meeting of the arbitrators to a party who had, prior to such meeting, notified to the arbitrators his withdrawal from the submission, does not invalidate an award; nor does the fact that the arbitrators, at the suggestion and with the consent of all parties accepted remuneration for their trouble, make the award illegal.

The Court having jurisdiction to file the award is determined by the value of the matter to which the arbitration related, and not by the amount actually allowed under the award.

*Narsingh Das v. Adjodhya Prosd Sukul*, (I.L.R., 31 Calc., 203), referred to.

PETITION under section 525 of the Code of Civil Procedure to file an award made on a submission to arbitration by plaintiff and defendant.

The defendant objected to the award being filed, alleging *inter alia*, that the arbitrators had been guilty of misconduct in having accepted remuneration for their services, and that no notice of some of the meetings of the arbitrators had been given to him.

The District Judge refused to allow the award to be filed.

The plaintiff preferred this appeal.

C. Ramachandra Rau Sahib and K. P. Madhava Rau for appellant.

C. V. Ananthakrishna Ayyar for P. R. Sundara Ayyar for respondent.

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\*Appeal No. 82 of 1903, presented against the decree of R.A. Graham, Esq., District Judge of South Canara, in Original Suit No. 57 of 1902,