

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Miller.

SRINIVASA AIYANGAR AND OTHERS (PLAINTIFFS Nos. 1 TO 6 AND LEGAL REPRESENTATIVES OF THIRD APPELLANT DECEASED), APPELLANTS,	1906. November 15, 16, 20, 21. December 10.
<i>v.</i>	1909. March 16, 17, 18.
ARAYAR SRINIVASA AIYANGAR AND OTHERS (DEFENDANTS), RESPONDENTS.*	1910. February 17.

Civil Procedure Code, Act XIV of 1882, ss. 13, 30—Decree in suits under s. 30—

*Order in execution not binding on persons not actually brought on record—
Res judicata—When judgments obtained in one capacity binding on the same
persons in another capacity.*

Where a party to a suit is allowed to represent others under section 30 of the Civil Procedure Code, the decree will be binding on those whom he is allowed to represent. But an injunction is personal in its nature, and where such a party disobeys an injunction and is proceeded against in execution for such disobedience, an order in such proceedings will not be binding on those whom he was allowed to represent in the suit.

Where a trustee is a member of a sect and his rights as trustee are linked with and subordinate to the rights of the sect, a decision on the rights of his sect fairly obtained in a suit between his sect and a rival sect will be binding on him in his special capacity as trustee in a subsequent suit between him in such capacity and the rival sect.

Judgments *in personam* in general bind only parties and their privies. But the relation established between them by a judgment is, in the absence of fraud or collusion, conclusive against third parties.

APPEAL against the decree of B. Cammaran Nair, Subordinate Judge of Tuticorin, in Original Suit No. 22 of 1903.

The facts are fully stated in the judgment.

T. R. Ramachandra Aiyar for *P. R. Sundara Ayyar* and *K. R. Krishnaswami Ayyangar* for fourth to seventh appellants.

C. Narasimhachariar for *S. Alasingarachariar* for respondents.

JUDGMENT.—Judgment in this case was reserved as we wished to reconsider, in connection with an argument of Mr. P. R. Sundara Aiyar to be noticed presently, the true effect, with reference to the present claim, of the adjudication in Original Suit No. 2 of 1896 on the file of the Subordinate Judge's Court of Tinnevely,

* Appeal No. 85 of 1904.

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wherein it was established that the right to the Adhyapakam office in the temple of Nachiar and Vatapatrasayanar in Srivilliputtur as well as in all the shrines attached thereto was vested in the Thenkalai and other Thirtakars, residents of that place, as found in the decree and judgment and that the Vadakalais other than the Thirtakars possessed no interest whatsoever in the office. As was intimated by us in the course of the argument, there can be no doubt that in that litigation the then plaintiffs acted on behalf of all the Thenkalais, while the then defendants represented the Vadakalais of the place, having been duly constituted so to represent by the notification issued by the Court under section 30 of the Code of Civil Procedure. As the present plaintiffs belong to the community of Vadakalais of Srivilliputtur, the previous adjudication clearly binds them as mere Vadakalais, if the Vedanta Desikar shrine be, as contended on behalf of the Thenkalai defendants in the present suit, a shrine attached to the Nachiar and Vatapatrasayanar temple.

No doubt, in the execution proceedings taken in that suit, it was held that the shrine in question was one so attached. The execution was however with reference to the enforcement of the order restraining the then actual defendants from interfering with the discharge of the duties of the Adhyapakam office. The present plaintiffs, not having been impleaded in the previous suit as defendants actually, were not liable to be proceeded against in execution for any alleged disobedience of the injunction granted therein; *Sadagopa Chari v. Krishnama Chari*(1). Consequently, the finding in the execution proceedings as regards the question whether the Vedanta Desikar shrine was appurtenant to the main temple or an independent institution, is not *res judicata* and that question would have to be tried in the present suit regarding the plaintiffs as mere members of the Vadakalai community and *a fortiori* if, as the plaintiffs allege, the right of management of the shrine belongs to them.

Before however passing orders as to the trial of the point, we proceed to deal with the argument of Mr. Sundara Ayyar referred to, viz., that even on the assumption that the shrine in question is subordinate and attached to the big temple, the finding that the Adhyapakam miras belongs exclusively to the Thenkalais, and

(1) (1889) I.L.R., 12 Mad., 356.

the Vadakalai Thirtakars, is, with reference to the plaintiffs' special capacity as *trustees* of the shrine, *res inter alios acta* and therefore it is open to them to prove that the rightful holders of the office are not the Thenkalais but the Vadakalais, to restrain the former from interfering with the office and to ensure the observance of the usage of the institution by executing the duties of the office from the Vadakalais. Though the decision of the question thus raised is not altogether free from difficulty, we are of opinion that the contention ought not to prevail, as the office of Adhyapakam in the shrine belongs, according to the plaintiffs, exclusively to the Vadakalais of Srivilliputtur and is vested in them and their descendants hereditarily, and as between that community and the Thenkalais of the place the adjudication in favour of the latter in the litigation of 1896 is as already stated absolutely binding. The case, with reference to these special facts, must be held to be governed by the rule stated in Bigelow on Estoppel as an exception to the general doctrine that judgments *in personam* bind only parties and privies, according to which exception the *relation* established between parties by such judgments is conclusive against third persons in the absence of fraud upon them (5th edition, p. 150). A clear instance of this exception is furnished by *Candee v. Lord*(1); followed in other cases, where it was held by the Supreme Court of New York that a judgment is conclusive evidence in a creditor's suit founded on it, as against the other creditors of the debtor, that the plaintiff is a creditor and to the amount awarded him by the judgment, unless it is impeached for fraud or collusion. In the absence of any precedents, Indian or English, elucidating this point, the reasoning of Gardiner, J., who delivered the judgment may usefully be set forth. He observed: "A debtor may be said to sustain two distinct relations to his property, that of owner and quasi trustee for his creditors. As owner he may contract debts to be satisfied out of his property, confess judgments, create liens upon it, sell or give it to others at pleasure and so far as he is personally concerned will be bound by his own acts. But the law lays upon him an obligation to pay his debts and holds him in behalf of his creditors to the exercise of good faith in all transactions relating to the fund upon which they must depend for payment.

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(1) 51 Am. Dec., 294; 2 N.Y., 269.

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“ He can therefore neither create a debt nor do any of the things
“ above mentioned *mala fide* to their prejudice. The common law,
“ of which the English Statute and our own is, but the exposition,
“ declares that every such debt, judgment or assurance contracted
“ or given with the intent to hinder, delay or defraud his creditors
“ is as against them to be void. And equity in many cases holds
“ the debtor and his confederates in the fraud as trustees for the
“ parties aggrieved. The rights of creditors to the property of the
“ debtor are to be worked out through the different relations to
“ which I have alluded. In creating debts or establishing the
“ relation of creditor and debtor, the debtor is accountable to no
“ one unless he acts *mala fide*. A judgment therefore obtained
“ against the latter without collusion is conclusive evidence of the
“ relation of debtor and creditor against others: 1. Because it is
“ conclusive between the parties to the record who in the given case
“ have the exclusive right to establish it; and 2. Because the
“ claims of other creditors upon the debtor's property are through
“ him and subject to all previous liens preferences or conveyances
“ made by him in good faith. Any deed, judgment or assurance
“ of the debtor so far at least as they conclude him must estop his
“ creditors and all others. Consequently, neither a creditor nor
“ stranger can interfere in the *bonâ fide* litigation of the debtor or
“ retry his cause for him or question the effect of the judgment as
“ a legal claim upon his estate. A creditor's right, in a word, does
“ not arise until the latter has violated the tacit condition annexed
“ to the debt, that he has done and will do nothing to defraud his
“ creditors.

“ Where however fraud is established, the creditor does not
“ claim through the debtor but adversely to him and by a title
“ paramount which over-reaches and annuls the fraudulent con-
“ veyance or judgment by which the latter himself would be
“ estopped. It follows from the principles suggested that a judg-
“ ment obtained without fraud or collusion and which concludes
“ the debtor, whether rendered upon default, confession, or after con-
“ testation is upon all questions affecting the title to his property
“ conclusive evidence against creditors to establish first the relation
“ of creditor and debtor between the parties to the record; and
“ second the amount of the indebtedness.” *Candee v. Lord*(1).

The Full Bench ruling in *Periasami Mudaliar v. Seetharama Chettiar*(1) that, independently of the original transaction, the decree against a father creates by its own force a debt as against him which his sons according to the Hindu Law are bound to pay unless it is illegal or immoral would seem to rest on the principle enunciated in the passage quoted above.

Turning to the present case, it is clear that the right of the trustee to require compliance with the usage of the institution in regard to the Adhayapakam office which office, by virtue of its hereditary character stands, according to the law of this country, on a par with interests in immoveable property, is necessarily linked with, dependent upon and subordinate to the right of the exclusive mirasi holders of the office—dependent and subordinate because it is by them and by them only that he can get the functions of the office performed. It follows that an adjudication obtained against them would be as binding on him as it is on them in the absence of fraud or collusion. A different view would be to uphold a contrariety of conclusions leading to a deadlock, that is to say, on the one hand the Thenkalais are entitled to exclude every Vadakalai interfering with their exercising the functions of the office in the shrine by virtue of the former decision, and yet, on the other hand, the trustee thereof is entitled to insist on the Vadakalais performing them. It would therefore seem to be the better opinion that the trustee is also concluded by the judgment which declared that the body of people put forward by him as entitled to the office were not so entitled. It is scarcely necessary to say that there was nothing to prevent the present plaintiffs in their alleged character of trustees making themselves parties to the former suit and resisting the claim of the Thenkalais as best they could and if possible preventing an adjudication in their favour. The omission to do so could not properly be held to give them the right to get rid of the effect of a decision against those very parties *in whose right* in truth the plaintiff's are now endeavouring to deny the title of the successful party. As the previous adjudication has not been impeached on the ground of fraud, the contention under consideration must be held to fail, and it will not be open to the plaintiffs to question the title of the Thenkalais to the office of Adhyapakam in the Vedanta

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Desikar shrine, if that is found to be an adjunct of the main temple.

The Subordinate Judge is called upon to submit within three months from this date findings on the following points :—

(1) Whether the plaintiffs are the hereditary trustees entitled to the management of the Vedanta Desikar shrine ?

(2) Whether the said shrine is, or is not, one of the shrines attached to the Nachiyar and Vatapatra Sayanar temple ? and

(3) Whether the plaintiffs are disentitled to a declaration of their alleged right as trustee with reference to the proviso to section 42 of the Specific Relief Act ?

We direct that the trustees of the Nachiyar and Vatapatra Sayanar temple be made defendants in the case. The trial of the issues should take place after these newly added defendants have had notice of their inclusion as parties and after they have had time to appear and file written statements. If necessary, further issues may be framed on their written statements.

Fresh evidence may be received.

Seven days will be allowed for filing objections.

[In compliance with the above order, the Subordinate Judge, Tinnevely, submitted findings and their Lordships granted the plaintiffs the declaration and injunction prayed for.]

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Krishnaswami Ayyar.*

VEERABADRAN ACHARI AND ANOTHER (PLAINTIFFS),

APPELLANTS,

v.

SUPPLIAH ACHARI AND ANOTHER (DEFENDANTS), RESPONDENTS. *

*Hereditary Village Offices Act, Madras Act III of 1895, ss. 3, 21—Act applicable to offices mentioned in s. 3, cl. 4 only in villages other than proprietary estates.**

Clauses 3 and 4 of section 3 of Act III of 1895 must be read together.

The Act is applicable to offices mentioned in clause 4 of section 3 only in villages other than those in proprietary estates and section 21 of the Act does

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