APPELLATE CIVIL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Phillips.

S. RAMAMURTI DHORA AND THREE OTHERS (PLAINTIFFS (Nos. 1, 2, 4 AND 5), APPELLANTS,

1911. October 11 and 13.

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (REPRESENTED BY THE COLLECTOR OF VIZAGAPATAM) (DEFENDANT), RESPONDENT.*

Right of Suit—Suit for exemption from land revenue, owner alone can bring suit for land, by A against B, ending in favour of A—Third parties cannot question— Res judicata, *Civil Procedure Code (Act V of 1908), sec. 13, not exhaustive.*

A suit for a declaration that the land is not liable to assessment can be instituted only by the person entitled to it as owner.

If a suit relating to ownership of the land, between two persons, has ended in favour of one of them, third parties having no interest in the land at the time of the litigation cannot, in the absence of any collusion or fraud on them, dispute the settlement of the dispute between them as to title, even for supposed want of jurisdiction; and it is equally true that neither of the parties to the litigation an be permitted to aver as against third persons in the like position that the land belongs to himself and not to his opponent in the litigation.

Second Appeal No. 574 of 1909, followed.

"Bigelow on Estoppel", 5th edition, 44, referred to.

Per Curiam.—The question does not depend upon the application of the doctrine of *res judicata.* Section 13, Civil Procedure Code, does not cover all cases of estoppel by judgment.

The suit was for a declaration that the defendant, the Secretary of State for India, was not entitled to levy any assessment on certain lands which the plaintiffs claimed as part of their Agraharam. In previous suits by *B* against plaintiffs once for a declaration of title and afterwards for possession of the lands, the judgments were in favour of *B*.

Held, that the plaintiffs in the present suit cannot be permitted to prove as against the present defendant that they were the owners and (2) that the suit was not maintainable.

Semble: Even if the previous litigation had ended in favour of the present plaintiffs, the Government, though it would not be entitled to question the plaintiff's title, would not be bound to regard the land as exempt from revenue.

SECOND APPEAL against the decree of D. RAGHAVENDRA Rao, the Temporary Subordinate Judge of Vizagapatam, in Appeal No. 362 of 1907, presented against the decree of S. VENKATASUBBA

* Second Appeal No. 248 of 1910.

SUNDARA AYYAR AND PHILLIPS, JJ.

RAMAMURTI DHORA v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

RAO, the District Munsif at Chodavaram, in Original Suit No. 306 of 1906.

The facts of this case are sufficiently set out in the judgment.

P. Narayanamurti for the appellants.

The Government Pleader for the respondent.

JUDGMENT.—In the suit out of which this Second Appeal arises the plaintiffs prayed for a declaration that the defendant, the Secretary of State for India in Council, was not entitled to levy any assessment on certain lands which they claimed, as part of their Lingabhupalapuram Agraharam. The defendant contended that the lands in question did not belong to the plaintiffs, that, in Original Suit No. 588 of 1891 in the Chodavaram District Munsif's Court, one Kannigadu and Sonigadu sued the present plaintiffs for a declaration that the lands belonged to them as Barikis (*i.e.*, village watchmen) and obtained a decree which was confirmed on appeal and second appeal, that subsequently they instituted another suit under the Madras Regulation VI of 1831 in the Revenue Court for the recovery of the lands and it was decided that they were entitled to the assessment of the lands from the present plaintiffs, that the plaintiffs could not therefore now be permitted to claim the lands as their own and that there is no cause of action for the suit. Both the lower Courts dismissed the plaintiffs' suit holding that the question of the plaintiffs' title to the land comprised in Original Suit No. 588 of 1891 is *res judicata*. The plaintiffs alleged that that suit did not comprise the whole of the lands included in the present suit. But we must accept the finding of the lower Courts that the lands in both the suits are the same.

We are of opinion that the plaintiffs have no cause of action which would entitle them to maintain the suit. The land admittedly belongs either to them or to the Barikis. The dispute between them was settled in Original Suit No. 588 of 1891 and the Barikis subsequently obtained in the Revenue Court a decree for such possession of the land as they were entitled to. The suit for declaration that the land is not liable to assessment can be instituted only by the person entitled to it as owner. It is contended that the plaintiffs are entitled to prove in this suit that the land belongs to them and not to the Barikis, and that the decision in Original Suit No. 588 of 1891 cannot be relied on by the defendant as he was not a party to that suit. This, in our opinion, is an entirely untenable proposition. It is not

contended that the plaintiffs would have any cause of action unless the land belonged to them as part of their Agraharam. The question relating to the ownership of the land was one entirely between the plaintiffs and the Barikis; and the Barikis having obtained judgment against the plaintiffs, third parties having no interest in the land at the time of the litigation cannot dispute the settlement of the dispute between them as to title, and it appears to us to be equally true that neither of the parties to the litigation can be permitted to aver as against third persons in the like position that the land belongs to himself and not to his opponent in the litigation. Suppose there is a dispute between *A* and *B* as to which of them is the owner of a zamindari, and it is decided in favour of *A*. Can *B* be permitted to sue each of the ryots of the zamindari for rent on the ground that the zamindari belongs to himself and not to *A*? It seems to us that undoubtedly he cannot. See our judgment in Second Appeal No. 571 of 1909. Again could *B* be permitted to institute a suit against Government for a declaration that it is not entitled to levy water-cess under Act VII of 1865 on certain lands in the zamindari, and claim to prove therein that the zamindari belongs to himself and not to *A*? The answer must be in the negative. In "Bigelow on Estoppel," 5th edition, page 44, the learned author observes as follow :—

"Littleton says : 'Where a man is outlawed upon an action of debt or trespass, or upon any other action or indictment, the tenant or the defendant may show the whole matter of record and the outlawry, and demand judgment if he (the demandant or plaintiff) shall be answered.' Lastly, Lord Coke says : 'Where the record of the estoppel doth run to the disability or legitimation of the person, there *all strangers* shall take benefit of that record ; as outlay, excommenqement, profession, attainder of præmunire of felony, etc., bastardy, mulierty, and shall conclude the party though they be strangers to the record. But of a record concerning the name of the person, quality, or addition no stranger shall take advantage, because he shall not be bound by it.' This principle is not confined to actions *in rem* as stated by the learned auther already referred to. "If all who have a right to appear and be heard in a cause have been duly made parties, the judgment establishes a perfect and complete right against all, as much as would a conveyance of a joint estate by all the parties

SUNDARA AYYAR AND PHILLIPS, JJ.

RAMAMURTI DHORA v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL.

interested. Judgment in an action strictly *in personam*, indeed, binds third persons in that way; all that is necessary is that all those who have the exclusive right to litigate the cause are proper parties to it, and that the question should be determined without collusion. Judgment that A is debtor of B is an example. . . . Indeed, the difference between judgments *in rem* and judgments *in personam* in our law, as regards their effect, appears at bottom to be only a difference of degree" (see p. 48). Again he observes "Third persons cannot object when those who have the exclusive right to settle a question have done so without fraud upon them; in the absence of fraud upon them, those (not being privies) who are not, or from want of interest might not be, parties, have no concern with the judgment, and cannot attack it even for supposed want of jurisdiction, or for fraud upon others" (see p. 151).

The question does not depend on the application of the doctrine of *res judicata* between the parties as expounded in section 13 of the Civil Procedure Code. That section does not cover all cases of estoppel by judgment. We must hold that the plaintiffs cannot be permitted to prove that they are the owners of the land in question. They have therefore no cause of action.

Mr. Narayanamurti who appears for the plaintiffs asks whether, if the decision in Original Suit No. 588 of 1891 had been in favour of the plaintiffs, the Government would be bound to regard the land as exempt from revenue. The answer is that Government would not be entitled to question the plaintiff's title to the lands as against the Barikis but would be entitled to say that the land is not exempt from the payment of assessment. That is a question which could not be finally decided between the plaintiffs and the Barikis.

In the result we dismiss the Second Appeal with costs.