SRI RAJAGOPALASWAMI TEMPLE v. JAGANNADHA PANDIAJIAR.

BENSON AND SUNDARA AYYAR, JJ.

District Munsif's finding in the affirmative is amply supported by the evidence set out in his judgment including the evidence of Defence Witness No. 2, the defendant's own *kanakkan*. We accept his finding on the question. In the result we reverse the decree of the District Judge and restore that of the District Munsif with costs here and in the Lower Appellate Court.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

1913. February 13.

M. VENCATARAJU (PLAINTIFF), APPELLANT,

v.

M. RAMANAMMA (FIRST DEFENDANT), RESPONDENT.*

Res judicata—*Civil Procedure Code (Act V of 1908), sec. 11—Judgment or findings on two issues, one of which alone was sufficient—Both findings*, res judicata.

Where a judgment is based on the findings on two issues, the findings on both the issues will operate as *res judicata*, though the finding on only one would be sufficient to sustain the judgment.

Krishna Behari Roy v. *Brojeswari Chowdranee* (1875) 2 I.A., 283 and *Venkayya* v. *Narasamma* (1888) I.L.R., 11 Mad., 204, followed.

APPEAL against the order of A. RAGHUNATHA RAO PANTULU, the Subordinate Judge of Cocanada, in Appeal No. 100 of 1911, preferred against the decree of K. APPAJI RAO, the District Munsif of Peddapur, in Original Suit No. 411 of 1909.

The plaintiff's suit is for the recovery of two items of property, and the material issues framed were whether the two sale-deeds for these lands and for a third item in the name of the first defendant's father and the first defendant respectively were taken *benami* for his (the plaintiff's) benefit. These issues were decided in a former suit (between the parties) instituted by the present defendant against the plaintiff for the recovery of the third item included in the sale-deeds. The decision in the previous suit in favour of the present plaintiff proceeded both on the ground that the plaintiff was the real beneficial owner of all the three items included in the sale-deeds and on the ground that he had acquired a title by prescription.

* Appeal Against Order No. 98 of 1912.

In this suit also the plaintiff asserted his two titles, viz., that he was the real owner and that he was in adverse possession. The first defendant pleaded that the properties belonged to her and that the plaintiff did not enjoy the properties adversely to her. An issue was raised, viz., whether these pleas of the first defendant were not *res judicata*. The District Munsif holding that they were *res judicata* allowed the suit as prayed for without allowing any evidence to be adduced on the two pleas abovementioned. On appeal the Subordinate Judge reversed the decree and remanded the suit for disposal according to law holding that the question of title was not *res judicata* for two reasons—(*a*) that it was not material in the previous case to have decided the question of title to the properties as there was a finding on the other issue, viz., that the plaintiff in the present suit who was in the former suit defendant was in adverse possession of the property then in dispute and (*b*) that the finding on the question of adverse possession in the previous suit was the first in logical sequence.

The plaintiff thereupon preferred this appeal.

P. Narayanamurti for the appellant.

P. Nagabushanam for the respondent.

JUDGMENT.—The Subordinate Judge's view on the question of *res judicata* cannot be supported. The plaintiff's suit is for the recovery of two items of property and the material issues framed are whether the two sale-deeds for these lands and for a third item in the name of the first defendant's father and the first defendant respectively were taken *benami* for his benefit. These issues were decided in a former suit between the parties instituted by the present defendant against the plaintiff for the recovery of the third item included in the sale-deeds. The decision in the previous suit proceeded both on the ground that the plaintiff was the real beneficial owner of all the three items included in the sale-deeds and on the ground that he had acquired a title by prescription. The same title was asserted by both the parties in the previous suit to all the three items and the issue was decided in the present plaintiff's favour. The Subordinate Judge holds that where a judgment is based on the findings of a Court on two issues, one of which would be sufficient to sustain the judgment, the finding on one only of the two issues can be *res judicata* and that that one is to be settled by finding out which

VENCATARAJU v. RAMANAMMA.

BENSON AND SUNDARA AYYAR, JJ.

of the two is logically prior to the other. This is in our opinion an entirely unsound view. See *Krishna Behari Roy* v. *Brojeswari Chowdranee*(1), *Venkayya* v. *Narasamma*(2) and *Bayyan Naidu* v. *Suryanarayana*(3), *per* SUNDARA AYYAR, J. We may also observe that it would often be impossible to apply the rule of logical priority. We do not consider it necessary to refer to certain decisions of the other High Courts which are contended to be in the respondent's favour. We reverse the Lower Appellate Court's order and remand the appeal for fresh disposal. The Subordinate Judge may, if he thinks fit, call for fresh findings on any of the other questions in the case or direct any evidence to be admitted which was wrongly rejected by the District Munsif. The costs of this appeal should be provided for in the revised decree.

APPELLATE CIVIL.

Before Mr. Justice Benson and Mr. Justice Sundara Ayyar.

1912. February 13.

SRI RAJAH PRAKASARAYANIM GARU AND TWO OTHERS (LEGAL REPRESENTATIVES OF THE PLAINTIFF), APPELLANTS,

v.

Y. P. VENKATA RAO (SECOND DEFENDANT), RESPONDENT.*

Evidence—Evidence taken by a Court without jurisdiction—Effect of consent to treat it as evidence, if relevant.

Consent or want of objection to the reception of evidence which is irrelevant cannot make the evidence relevant, but consent or want of objection to the wrong manner in which relevant evidence should be brought on record of the suit disentitles parties from objecting to such evidence in a court of appeal.

Miller v. *Madho Das* (1897) I.L.R., 19 All., 76 at p. 92 (P.C.), followed.

The fact that it was evidence taken previously by a Court which was held to have had no jurisdiction to try the case and take the evidence and that it was consented to be treated as evidence does not affect the validity of the consent.

---

(1) (1875) 2 I.A., 283. (2) (1888) I.L.R., 11 Mad., 204.
(3) (1912) 23 M.L.J., 543 at p. 564.

* Appeal Against Order No. 158 of 1912.