really no bearing on the point. Mr. Sirkar Sastri's view in his book on Hindu Law is not to the effect that the right to maintenance can be extinguished by the possession of other property by the widow. We must hold that the plaintiff is entitled to some maintenance out of her husband's estate. We cannot say that the amount awarded is excessive. We dismiss the Second Appeal with costs.

APPELLATE CIVIL.

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

SRI RAJAGOPALASWAMI TEMPLE THROUGH ITS TRUSTEE RAMA AYYANGAR (PLAINTIFF), APPELLANT,

1913. February 11 and 12.

v.

JAGANNADHA PANDIAJIAR (DEFENDANT), RESPONDENT.*

Landlord and Tenant—Inam Register—Object of mentioning the tax payable for the land—Inam authorities, duties of—Right of melvaramdar to trees in case of lands which were topes at the Inam Settlement.

In cases where the holding of a tenant was at the time of the Inam Settlement and has subsequently been, a tope consisting of trees the melvaramdar has a right to a portion of the value of the trees and the ryot is not entitled to cut them down for his sole appropriation, the portion due to the melvaramdar being determinable according to the evidence.

The incidents of the tenure of a tenant under an Inamdar are governed by the law applicable to landlord and tenant and not by the Inam patta or the Inam Register whose object in mentioning the tax payable by the tenant was only to enable the Inam authorities to fix the quit-rent payable to Government by the Inamdar.

Bodda Goddeppa v. *The Maharaja of Vizianagaram* (1907) I.L.R., 30 Mad., 155, *Rangayya Appa Rao* v. *Kadiyala Ratnam* (1890) I.L.R., 13 Mad., 249, *Apparau* v. *Narasanna* (1892) I.L.R., 15 Mad., 47, *Narayana Ayyangar* v. *Orr* (1903) I.L.R., 26 Mad., 252, and *Kakarla Abbayya* v. *Raja Venkata Pappayya Rao* (1906) I.L.R., 29 Mad., 24, distinguished.

SECOND APPEAL against the decree of F. D. P. OLDFIELD, the District Judge of Tinnevelly, in Appeal No. 378 of 1910, preferred

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* Second Appeal No. 1827 of 1911.

SRI RAJAGOPALASWAMI TEMPLE v. JAGANNADHA PANDIAJIAR.

against the decree of K. S. RAMASWAMI SASTRI, the District Munsif of Tinnevelly, in Original Suit No. 311 of 1908.

The facts of the case appear from the judgment.

M. A. Thirunarayanachariar for the appellant.

M. D. Devadoss for the respondent.

BENSON AND SUNDARA AYYAR, JJ.

JUDGMENT.—The plaintiff, the trustee of a temple, instituted the suit on behalf of the temple, as the inamdar, of a tope to recover half the value of the trees in the inam holding cut and appropriated by the defendant, the occupancy ryot of the holding. The plaintiff claimed to be the melvaramdar of the tope and alleged that both by virtue of his right as melvaramdar and according to usage he was entitled to half of the value of dead trees and trees cut by the ryot. The defendant pleaded that the plaintiff was entitled only to a sum of Rs. 11-11-6 a year and the road cess payable to Government out of the produce of the tope and that he himself was the absolute proprietor subject to the liability to the payment of the amount. The District Munsif and the learned District Judge have both found that the melvaram right in the land belonged to the plaintiff and that his right is not that of one entitled only to a benefit to arise out of land belonging to the defendant as proprietor. The Munsif also held that the evidence showed that the plaintiff's claim to half the value of the trees was supported by the evidence of usage adduced by the plaintiff and gave him a decree for Rs. 430. The District Judge held that as melvaramdar the plaintiff was not entitled to any portion of the value of the trees in the holding and that he also failed to establish any legal custom justifying his claim. He accordingly dismissed the suit. Mr. Devadoss for the respondent has repeated before us the contention that the defendant is the absolute proprietor of the holding subject only to the liability to pay Rs. 11-11-6 a year and the road cess to the plaintiff, but we agree with the Lower Courts that the plaintiff is the melvaramdar of the holding. The inam register and the inam patta show that the plaintiff's title to the land as inamdar was recognized by Government. The register no doubt mentions Rs. 11-11-6 as the tree tax payable for the land and Rs. 16-4-9 as the net assessment. The object of mentioning the tax was to fix the quit rent payable to Government by the inamdar. Subject to the payment of the quit rent, the plaintiff was recognized as the melvaramdar. The relations between the melvaramdar and kudivaramdar

were governed by the law applicable to landlord and tenant and it was not the intention of the inam authorities, nor was it within the scope of their duties, to define those relations. The rights of the melvaramdar and kudivaramdar must therefore be determined according to the provisions of the Rent Recovery Act and other Rules of law applicable to them.

There is probably some conflict of opinion in the decisions of this Court with respect to the melvaramdar's right to the trees in the land comprised in a ryot's holding, *cf. Bodda Goddeppa* v. *The Maharaja of Vizianagram*(1), *Rangayya Appa Rau* v. *Kadiyala Ratnam*(2), and *Apparau* v. *Narasanna*(3), with *Narayana Ayyangar* v. *Orr*(4), and *Kakarla Abbayya* v. *Raja Venkata Papayya Rao*(5), but all these decisions relate to cases where the holding consists of land occupied mainly for cultivating wet or dry crops, and the question for decision was whether the melvaramdar's right would extend in any measure to the trees in the holding in the occupancy, and under the cultivation of the ryot. But in the present case, the holding was at the time of the inam settlement, and has subsequently been a tope consisting of trees. In such a case there can be no doubt that the melvaramdar has a right to the trees and the ryot cannot be entitled to cut them down for his sole appropriation. The cases referred to above have therefore no application, and the learned District Judge was in our opinion in error in extending them to this case. The plaintiff must be held to be entitled to a portion of the value of the trees cut by the defendant. The Judge held that the evidence as to usage was not sufficient to entitle the plaintiff to half the value on the basis of a customary right apart from his legal right as melvaramdar. He recorded no finding on the question whether, in the view that the plaintiff is entitled to a portion of the value of the trees as melvaramdar, the evidence showed that he should receive half the value. For this purpose it is not necessary for the plaintiff to establish the requisites of a customary right not otherwise sanctioned by law. It would be enough to adduce evidence sufficient in the opinion of the Court to show that the claim in question was understood by the parties to be one of the incidents of the relationship between them. The

(1) (1907) I.L.R., 30 Mad., 155. (2) (1890) I.L.R., 13 Mad., 249.
(3) (1892) I.L.R., 15 Mad., 47. (4) (1903) I.L.R., 26 Mad., 252.
(5) (1906) I.L.R., 29 Mad., 24.

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.