VENUGOPAL MUDALI v. VENKATA-SUBBIAH CHETTY.

SADASIVA AYYAR, J.

I need not say that where the order on a review petition as distinguished from an appeal petition merely refuses to interfere with the judgment or order sought to be reviewed or where an appeal is not entertained at all though filed, the original decree or order is and continues to be the subsisting and final decree or order. In this respect an order rejecting a review petition stands on a different footing from a decision passed on appeal confirming the lower Court's judgment and dismissing the appeal. If the decision on review or revision does interfere with the original decision, the former decision becomes the only subsisting order and stands on the same footing as the decision passed in a competent appeal. It will in that case become the starting point for limitation.

In the result, I would dismiss this appeal with costs.

NAPIER, J.

NAPIER, J.—I concur.

K.R.

APPELLATE CIVIL.

Before Sir John Wallis, Kt., Officiating Chief Justice, Mr. Justice Ayling and Mr. Justice Seshagiri Ayyar.

MUTHAMMAL (PLAINTIFF), APPELLANT,

v.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL THROUGH THE COLLECTOR OF TINNEVELLY (DEFENDANT), RESPONDENT.*

1914. September 22 and October 2 and 9.

Civil Procedure Code (Act V of 1908), sec. 11—Res judicata—Decision of a Boundary Settlement Officer—Grounds of decision, if res judicata*—Boundaries Act (XXVIII of 1860), ss. 24 and 25—Estoppel.*

Where a Boundary Settlement Officer decided under the Boundaries Act (XXVIII of 1860) that certain lands did not belong to a *mittadar* but to the Government on the ground that they never had formed part of the area of the *mitta*, and no suit was brought by the *mittadar* to contest the decision under section 25 of the Act,

Held, that the ground of the decision as well as the actual decision was *res judicata* in a subsequent suit instituted by the *mittadar* to recover the lands as having formed part of the *mitta* or in the alternative for a reduction of the *peshkash* of the *mitta*.

Kamaraju v. *The Secretary of State for India* (1888) I.L.R., 11 Mad., 309 (F.B.), followed.

Per SESHAGIRI AYYAR, J.—The decision of the Survey Officer is binding upon the parties whether it is *res judicata* in the technical sense in which the term is used in the Civil Procedure Code or not.

* Letters Patent Appeal No. 41 of 1913.

Krishna Behari Roy v. *Brojeswari Chowdranee* (1875) 2 I.A., 283 at p. 286, and *In re Bank of Hindustan, China and Japan (Alison's Case)* (1873) L.R., 9 Ch. App., 1, referred to.

APPEAL under section 15 of the Letters Patent against the judgment of WHITE, C.J. (TYABJI, J., dissenting) in *Muthammal* v. *The Secretary of State for India*(1) preferred against the decree of K. RAMANADA AYYAR, the Subordinate Judge of Tinnevelly, in Original Suit No. 57 of 1908.

The plaintiff brought a suit in 1908 to recover certain lands from the Secretary of State for India in Council on the ground that they formed part of an estate called the Vallam *mitta* which was sold in Court auction and purchased by the predecessor in title of the plaintiff in 1868. The plaintiff alleged that the lands were part of the *mitta* of which she was the present proprietor, but that the Forest Department of the Government wrongfully took them up in 1880 and included them in the reserved forest and that in spite of repeated demands by the successive owners of the *mitta* the Government had not restored them to the *mittadar*.

The plaintiffs also prayed in the alternative, in the event of her not being entitled to recover possession of the lands, for a declaration of her liability to pay as *peshkash* no more than Rs. 535-7-6 per annum for the lands of the *mitta* in her possession at present after excluding the lands taken over by Government as aforesaid, the total *peshkash* of the entire *mitta* having been fixed at Rs. 825. In 1880 the then owner of the *mitta* filed a petition before the Boundary Commissioner under the Boundaries Marks Act (XXVIII of 1860), claiming the suit lands as lands forming part of the Vallam *mitta* and that they were improperly taken over by the Forest Department as aforesaid. The Boundaries Commissioner held an inquiry and, after taking the evidence adduced by the petitioner and examining the Government records, decided against the claim of the petitioner holding that the lands never formed part of the *mitta* but were the property of the Government; he passed an order on the 9th July 1880 under section 24 of the Boundaries Marks Act, and no suit was filed by the petitioner to contest this order under section 25 of the Act. The defendant contended in the suit that the lands did not appertain to the *mitta*, that the claim for possession was barred by limitation, that the suit was barred

(1) Appeal No. 199 of 1910.

MUTHAMMAL v. THE SECRETARY OF STATE FOR INDIA.

as *res judicata* and that the Civil Court had no jurisdiction to apportion the revenue and that the suit should be dismissed on all these grounds. The Subordinate Judge held that the question whether the lands formed part of the *mitta* was conclusively negatived by the decision of the Boundaries Commissioner, that the claim to recover possession was barred by limitation and that the Civil Courts were not competent to apportion the revenue as between the portions of the estate even if the lands had formed part of the *mitta*. On appeal to the High Court the plaintiff did not contest the finding of the Subordinate Judge on the question of limitation but pressed her claim for apportionment of *peshkash*. The appeal was heard by WHITE, C.J., and TYABJI, J. The learned CHIEF JUSTICE held that the suit as regards the apportionment of revenue was not cognizable by a Civil Court, while TYABJI, J., took a contrary view, and in the result the appeal was dismissed. A Letters Patent Appeal was preferred against the judgment of the learned CHIEF JUSTICE.

L. A. Govindaraghava Ayyar for the appellant.

The Government Pleader for the respondent.

WALLIS, OFFG. C.J.

WALLIS, OFFG. C.J.—In this case the plaintiff sued to recover certain lands which she alleged to form part of her mitta and to have been wrongfully taken possession of by Government and in the alternative for a reduction of the *peshkash* charged on the mitta and a refund of the *peshkash* paid by her for fasli 1317 proportionate to the extent of the lands which had been taken from her. The boundaries of the mitta and the adjoining Government lands were delineated under the Boundaries Act XXVIII of 1860 in the year 1880 when the Boundary Settlement Officer found that the lands in question had never formed part of the area of the mitta and accordingly excluded them. The proprietor of the *mitta* did not contest this decision by filing a suit under section 25 of the Act as he might have done. In these circumstances the decision of the Boundary Settlement Officer that the lands in question did not form part of the zamindari is *res judicata* according to the decision of the Full Bench in *Kamaraju* v. *The Secretary of State for India*(1) and I think that the ground of the decision, viz., that they never had formed part of the mitta is also *res judicata* as having formed the ground of decision. The Subordinate Judge was therefore right in dismissing the plaintiff's suit on this ground. In

(1) (1888) I.L.R., 11 Mad., 309 (F.B.).

the view I take of the case the question whether the Court is precluded by the terms of section 58 of the Madras Revenue Recovery Act III of 1864 from entertaining the plaintiff's claim for a return of proportionate peshkash for the fasli in question, as to which there was a difference of opinion between the learned Judges who heard the appeal does not arise. The appeal fails and is dismissed with costs.

WALLIS, OFFG. C. J.

AYLING, J.—I agree.

AYLING, J.

SESHAGIRI AYYAR, J.—I entirely agree with my Lord. I only wish to say a few words with reference to the argument of Mr. Govindaraghava Ayyar that the decision of the Survey Officer in 1880 under section 24 of Act IV of 1897 is conclusive only as regards the actual decision arrived at in the case, namely, that the lands claimed belonged to the Government and not to the *mittadar*. I am unable to uphold this contention. Exhibit III, the petition to Mr. Baber, sets out the ground on which the claim was made. It says that prior to the sale of the mitta to the claimant's transferor, the *mitta* included the lands in dispute, and that at the sale in 1868, they passed to the purchaser. These were the questions which the Survey Officer had to decide. He did decide them, although he did not raise the points in the form of specific issues. Section 24 of the Boundaries Act says that such a decision is final, subject to its being contested in a Civil Court within a specified time. It is conceded in his case that no suit was filed within the time limited. The decision is therefore binding upon the parties whether it is *res judicata* in the technical sense in which the term is used in the Civil Procedure Code or not. The general principles enunciated in section 11 of that Code are of universal application. The question under that section will be whether a matter was substantially in issue and not whether it has been formally in issue. It was pointed out by the Judicial Committee of the Privy Council in *Krishna Behari Roy* v. *Brojeswari Chowdranee*(1) : "It has probably never been better laid down than in a case which was referred to in volume 3 of Atkyns(2), *Gregory* v. *Molesworth*, in which Lord HARDWICKE held that where a question was necessarily decided in effect, though not in express terms, between parties to the suit they could not raise the same question as between themselves in any other suit in any other form ; and that decision has been followed by a long course of decisions,

SESHAGIRI AYYAR, J.

(1) (1875) 2 I.A., 283 at p. 286. (2) (1747) Page 626.

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SESHAGIRI AYYAR, J.

the greater part of which will be found noticed in the very able notes of Mr. Smith to the case of *The Duchess of Kingston*." In *Narayanan Chetty* v. *Kannammai Achi*(1) the learned Judges say that an appellate judgment operates by way of estoppel as regards all findings which are necessary to make the decree effective. *Gokul* v. *Shrimal*(2) lays down the same proposition. Apart from the plea of *res judicata* as a question of estoppel the same considerations must apply. In Bigelow on Estoppel, sixth edition, page 184, after a full examination of all the English and American authorities, it is stated: "A former judgment or verdict, on the other hand, is conclusive between the parties to contested causes (as has already been intimated) of all necessary inferences arising from it as well as of the matters actually in issue." See also pages 97 and 157. Sir GEORGE MELLISH expresses the proposition thus in *Alison's Case, In re Bank of Hindustan, China and Japan*(3): "It is clear, I apprehend, that a judgment of the Court of Common Law is not only conclusive with reference to the actual matter decided, but that it is also conclusive with reference to the grounds of the decision, provided that from the judgment itself the actual grounds of the decision can be clearly discovered." It seems clear from these authorities that the plea of *res judicata* or estoppel is available not only as regards the final conclusion of the Court or officer, but also regarding all findings necessary for arriving at that conclusion whether they are given on formal issues raised in the case or are referable to points which must have been the basis of the final determination. In the present case, the principal subject of controversy was whether the court-sale of the *mitta* included the lands which the Government claimed to exclude. It was on the ground that it did not form a portion of the *mitta* that the Survey Officer decided that the property did not belong to the claimant, but to the Government. That pronouncement estops the appellant from claiming that the lands in dispute passed to him by the auction sale. As the *peshkash* was imposed only after the sale to him, it follows that the assessment on these lands was not taken into account in fixing the amount payable by the appellant.

K.R.

(1) (1905) I.L.R., 28 Mad., 388. (2) (1904) 6 Bom. L.R., 288.
(3) (1873) L.R., 9 Ch. App., 1 at p. 2.