of the reversioner can be accelerated might be made behind his back. Further, the acceleration can affect (if at all) only the half share which belonged to the elder widow who died first (and the right to enjoy which half share by survivorship was abandoned by the younger widow), and could not apply to the share of the younger widow who conveyed her rights to the widow who died first (because that share was not surrendered to any reversioner, and surrender which accelerates is surrender to the succeeding reversioner and not a surrender to a co-widow).

In the result, I would set aside the judgment of the District Judge who proceeded upon the sole ground of limitation, and would remand the appeal to him for disposal on the other questions arising in the case.

NAPIER, J.—I entirely agree.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Spencer.

SRI RAJAH SOBHANADRI APPA RAO BAHADUR, ZAMINDAR GARU (THIRD PLAINTIFF), APPELLANT,

1920, March 19 and 22.

v.

GURRAJU AND OTHERS (DEFENDANTS), RESPONDENTS.*

Madras Estates Land Act (I of 1908), sec. 189 (3)—Civil Procedure Code (V of 1908), s. 11—Res judicata—Suit to enforce acceptance of patta—Decision by Revenue Court—Decision as to occupancy right or title to land claimed as part of the holding—Subsequent suit in a Civil Court for ejectment of tenant as trespasser—Decision of Revenue Court, whether binding as res judicata in the suit in Civil Court.

Section 189 (3) of the Madras Estates Land Act does not constitute the decisions of the Revenue Courts, on an issue as to title to land or occupancy rights therein arising incidentally in suits to enforce the acceptance of pattas which are cognizable exclusively by such Courts, res judicata in a subsequent suit in a Civil Court instituted by the landlord for ejectment of the tenant from such land.

SECOND APPEAL against the decree of V. R. KUPPUSWAMI AYYAR, Subordinate Judge of Kistna at Ellore, in Appeal Suit No. 262

* Second Appeal No. 2123 of 1918.

APPA RAO v. GURRAJU.

of 1917, preferred against the decree of R. V. KRISHNA AYYAR, District Munsif of Ellore, in Original Suit No. 667 of 1915.

The material facts are set out in the judgment.

T. Ramachandra Rao for appellant.

V. Suryanarayana for respondent.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—The third plaintiff is the appellant, he being the Zamindar of Nuzvid. The defendants in these suits claimed to hold what are called 'Banjar' lands as part of their respective jirayati holdings. The plaintiff's case is that these banjar lands are not parts of these defendants' jirayati holdings, but had been in their occupation on temporary grazing leases, and that on the date of the suits the defendants were in possession as mere trespassers. The suits were brought, on the strength of section 163 of the Estates Land Act (I of 1908), in the Civil Court.

Both the lower Courts found as a matter of fact that these banjar lands were jirayati lands, that they were treated by the Zamindar from time immemorial as parts of the respective holdings of the defendants which contained other lands admitted to be jirayati, and that the defendants were not trespassers. But the plaintiff argued, that by reason of the decisions in certain prior suits brought by the plaintiff (or rather the person who then represented the interests of the plaintiff) for the enforcements of pattas for the former fasli, the question whether the defendants were entitled to hold these particular lands as ryots must be decided against them as res judicata. For this contention the language of section 189, clause (3) of the Estates Land Act is relied on.

It is admitted that the matter is not res judicata if section 11 of the Civil Procedure Code, or if the principle embodied in section 11, can alone be relied upon in argument, because the present suits in ejectment are not cognizable by the Revenue Court which tried the former suits. Hence, the appellant was constrained to rely in support of his argument upon what he contended was the true meaning of section 189 (3) of the Estates Land Act.

Now, where Revenue Courts and Civil Courts are thus exercising jurisdiction in disputes between the same parties (one kind of Court in certain matters and the other kind in some other matters), it is desirable that the legislature clearly set out in detail

the particular matters over which each set of Courts is intended to have jurisdiction, and also provide clearly and definitely what has to be done when conflicts arise between the opinions of the two sets of Courts on the same question, when they are dealing with the separate matters within their respective jurisdictions. I shall just quote a few passages from *Sheo Narain Rai* v. *Parmeshar Rai*(1) (such conflicts having apparently arisen in the United Provinces frequently) :

"As it is not conceivable that the legislature could have intended that there should be of its own creation two sets of Courts in these provinces, each having jurisdiction to determine the same questions of title to land let to agricultural tenants and neither having any power to compel the other to accept its decision by revision or other procedure or by process, we must assume that in all cases in which it is clear that for the purposes of adjudicating upon an application or making a decree in the suit it was the intention of legislature that the decision on the question of title of the Court which was given the exclusive jurisdiction to entertain the application or the suit should, subject to such rights of appeal as was allowed by the Statute, be final between the parties unless the contrary intention was expressed."

Then in another part of the judgment (at page 280) the learned Judges say—

"It may be inferred from a long series of decisions . . . that the opinion was entertained by all the Judges who in these provinces or in the Lower Provinces of Bengal have considered the question, that questions of proprietary title to land and of title to tenancies between rival claimants but not questions as to the status of a tenant of agricultural land, are questions which should be determined by the Civil Courts and not by the Court of Revenue in the more or less summary proceedings of the latter Courts."

Then they consider the particular provisions of the Act which had to be considered in that case and arrive at the conclusion that on a particular point the decision of the Revenue Courts should be treated as final. The difficulties which the learned Judges felt in arriving at their conclusion are indicated by other passages in the judgment (at page 275) :

"It frequently happens that a Court of Revenue and a Civil Court come to different conclusions on the same question of title

(1) (1896) I.L.R., 18 All., 270 (F.B.).

APPA RAO v. GURRAJU.

SADASIVA AYYAR, J.

litigated between the same parties in reference to the same lands. In such a case which decision is to prevail? Is that decision to prevail which was first given or is that decision to prevail which was given in the proceeding or suit first instituted or is the time of one of such Courts to be taken up in arriving at a decision which when pronounced will not be binding on the other Court and will be for all practical purposes a *brutum fulmen*? How is such decision to be enforced? It is clear that unless a question of title arising in proceedings in ejectment under Act XII of 1881 had been determined between the parties by a reference to a Civil Court under section 204 of that Act or in a suit instituted in accordance with an order of a Court of Revenue, made under section 208-A of that Act, the Court of Revenue would not be bound by the finding as to title of a Civil Court. The decision of an issue as to title by a Civil Court would not operate res judicata under section 13 of Act XIV of 1882 as to the same question of title in proceedings under sections 36 and 39 of Act XII of 1881, although between the same parties and relating to the same land; and similarly a decision of a Court of Revenue under section 39 of Act XII of 1881, adverse to the application under that section, contesting the liability of the person upon whom a notice of ejectment had been served, would not operate as res judicata under section 13 of Act XIV of 1882 in a suit for ejectment in a Civil Court between the same parties, the Court of Revenue not having jurisdiction to try a suit to eject a trespasser, and a Civil Court not having jurisdiction to try an application under section 39 of Act XII of 1881 contesting liability to ejectment."

At page 273 they say:

"This is one of that class of cases which exemplifies the mischief which arises when the jurisdiction of Courts created by the legislature is not plainly and explicitly and sharply defined. That mischief is intensified when, as in these provinces, there are two sets of Courts, the Courts of Revenue and the Civil Courts, each having in some matters exclusive jurisdiction whilst as to other matters the question as to which of such Courts has exclusive jurisdiction depends, not upon plain and explicit language of the legislature but upon inference to be drawn, from a painstaking examination of a variety of sections in an Act and upon general principles of jurisprudence upon which it is assumed that the legislature has acted."

Having made the above quotations to indicate the difficulties created by the legislature, I shall approach the consideration of

this case, with reference to certain general principles of jurisprudence. Civil Courts have got unlimited jurisdiction over Civil rights, except when such jurisdiction is expressly taken away and conferred upon another kind of Court. Hence, provisions of statutes taking away or restricting the jurisdiction of Civil Courts ought to be strictly construed. Further, it is the duty of special Courts having restricted jurisdiction to respect and follow the decisions of ordinary Civil Courts on matters of title to land and on such important questions as questions relating to status and rights, even though the former Courts have jurisdiction to decide such important questions incidentally when dealing with special matters which have been placed by the legislature within their exclusive jurisdiction. That duty is recognized expressly by the legislature in the Provincial Small Cause Courts Act, and in the possession chapter of the Criminal Procedure Code. That duty has been enforced by the decisions of this High Court in cases arising under the maintenance chapter of the Criminal Procedure Code. Section 213, clause (3) of the Estates Land Act also recognizes that general principle. No doubt in the absence of a decision of a Civil Court on a question of title, the principle embodied in section 11, Civil Procedure Code, though not that section itself (because that section is not one of the sections made applicable to the Revenue Courts expressly by section 192 of the Estates Land Act), would apply, and a Revenue Court deciding a subsequent suit ought to accept the findings (even incidental but necessary findings) of the same Court in a former suit. See *Bayyan Naidu* v. *Suryanarayana*(1) and *Venkatachalapati* v. *Krishna*(2). But (1) if a question of title arises in the Revenue Court for the first time incidentally and is decided in one way; (2) if it then arises in a Civil Court and was decided in the opposite way; and (3) if it again arises in the Revenue Court in a third suit exclusively cognizable by that Court the Revenue Court, in my opinion, should, on this third occasion respect the decision of the Civil Court given on the second occasion and not follow its own finding in the first suit. I have carefully considered the several relevant sections of the Estates Land Act (sections 40, 51, 57, 153, 163 and 213 besides the section directly in question, viz., 189) and have come to the conclusion

(1) (1914) I.L.R., 37 Mad., 70. (2) (1890) I.L.R., 13 Mad., 287.

APPA RAO v. GURRAJU. — SADASIVA AYYAR, J.

that section 189 (3) was not intended to go beyond section 11, Civil Procedure Code, and to constitute the decisions on issues arrived at in the Revenue Court, in suits cognizable exclusively by the Revenue Courts, binding on a Civil Court as res judicata, even though the subsequent suit brought in the Civil Court could not be brought in a Revenue Court. That principle seems to me to follow from the observations found in *Subbanna Achariar* v. *Gopalakrishna Achariar*(1), *Chidambaram Pillai* v. *Muthummal*(2), *Gouse Moideen Sahib* v. *Muthialu Chettiar*(3) and *Seetharamayya* v. *Narasimulu*(4). I do not think it necessary to elaborate the matter, because I am glad to find that the question was considered so recently as last week in *Sri Rajah Satrucharla Sivaskandamraju* v. *Venkandhora*(5) by a Division Bench of this Court (AYLING and COUTTS TROTTER, JJ.). The learned Judges held that the decision of a Revenue Court, on the question whether the relationship of landlord and tenant existed or not, was not res judicata in a subsequent suit in a Civil Court as this subsequent suit was not cognizable by a Revenue Court. Section 189, clause (3), was quoted before the learned Judges, but they held that it did not extend the scope of the doctrine of res judicata in favour of the decision of Revenue Courts beyond what was enacted in section 11, Civil Procedure Code.

As I said already, I think it is the duty of the legislature to make the provisions in the Estates Land Act on these points more clear and definite. I might even say that whenever the relationship of landlord and tenant is denied in a Revenue Court, or a question of title which cannot be finally decided by a Revenue Court is raised in that Court, provision ought to be made to stay the proceedings in the Revenue Court till this matter is finally decided by a suit in a Civil Court. I shall just quote what the Allahabad High Court has said on this matter in *Sheo Narain Rai* v. *Parmeshar Rai*(6) (modifying the language of the learned Judges slightly because they were dealing with a different enactment):

"In our opinion whenever, in suits or applications exclusively cognizable by a Revenue Court, the relationship of landlord and tenant between the parties or between those through whom they

(1) (1916) 34 I.C., 354.
(2) (1914) 15 M.L.T., 340.
(3) (1913) 14 M.L.T., 523.
(4) S.A. No. 1002 of 1916.
(5) S.A. No. 786 of 1919.
(6) (1896) I.L.R., 18 All., 270 at 281 (F.B.).

claim had not been admitted . . . it should be compulsory on the Court of Revenue to pass an order staying the proceedings before it for a limited time within which the party denying that the relationship of landlord and tenant existed might bring a suit in a Civil Court to determine the question of title. If no such suit should have been brought within a limited time, the Court of Revenue should without further inquiry decide finally the question of title against the party who had denied that the relationship of landlord and tenant existed. If such suit were brought, the Court of Revenue should be bound to accept the result of that suit as determining the question of title whether the suit was determined in the Civil Court by a dismissal for default or upon an adjudication on the questions of title."

In the result, I agree with the Lower Appellate Court's conclusion on the question of res judicata argued before us and would therefore dismiss these Second Appeals with costs.

SPENCER, J.—In these suits there can be no doubt that no plea of res judicata under section 11 of the Civil Procedure Code can be maintained, as the Revenue Court which decided the previous suits for acceptance of patta in 1909 was not competent to try the present suits for delivery of possession. But the plaintiff relies on section 189, clause (3), of the Estates Land Act which declares that

SPENCER, J.

"the decision of a Revenue Court or of an appellate or revisional authority in any suit or proceeding under this Act on a matter falling within the exclusive jurisdiction of the Revenue Court shall be binding on the parties thereto and persons claiming under them in any suit or proceeding in a Civil Court in which such matter may be in issue between them."

It is argued that suits to enforce acceptance of pattas under section 56 are suits within the exclusive jurisdiction of Revenue Courts. With this argument I agree. Similarly, suits under section 30 for enhancement of rent, section 38 for reduction of rent, section 40 for commutation of rent, and section 55 to obtain a patta, are suits exclusively cognizable by Revenue Courts.

Next it is argued that since, in such suits, the Collector is bound by the provisions of section 57 to first inquire whether the defendant is bound to accept a patta and secondly whether the patta tendered is a proper one, and since in section 51 the local

APPA RAO v. GURRAJU. SPENCER, J.

description and extent of the land, and all special terms by which the parties are to be bound are some of the details to be contained in the patta, a Civil Court is precluded from going into the question whether a ryot, who was previously a party to suits for acceptance of patta, has occupancy rights in any portion of the land in that patta. I think the District Munsif has given the correct answer to this argument in paragraph 11 of his judgment. He says:

"in deciding the propriety of the terms of a patta the question of the defendants' . . . occupancy rights does no doubt arise for incidental decision, but it cannot be said that it arises so directly and substantially for decision that the decision thereon by a Revenue Court can be said to be res judicata in a subsequent ejectment suit in a Civil Court where the question may again directly and substantially crop up."

I think that the intention of the legislature in framing section 189 was that such questions as those relating to the fairness and propriety of the rate of rent fixed by a Revenue Court which a Collector from his experience of the agricultural conditions and the rates and prices prevailing in his district is in a position best fitted to settle, should not be again agitated in a Civil Court after they have been once decided in suits instituted in Revenue Courts under sections 30, 38, 40, 55 and 56 of the Estates Land Act. In the present case, I am of opinion that the prior decision having been a decision upon an incidental question as to occupancy rights, and not a matter falling within the exclusive jurisdiction of a Revenue Court, is not binding on the Civil Court under section 189 (3), although it did arise in a suit to enforce acceptance of pattas which was exclusively cognizable by a Revenue Court. This view is supported by the opinion expressed in two unreported cases, *Seetharamayya* v. *Narasimulu*(1), decided by SESHAGIRI AYYAR and NAPIER, JJ., and *Sri Rajah Satrucharla Sivaskandamraju* v. *Venkandhora*(2), decided by AYLING and COUTTS TROTTER, JJ. I agree with my learned brother that these appeals should be dismissed with costs.

K.R.

(1) S.A. No. 1002 of 1916 (unreported). (2) S.A. No. 786 of 1919 (unreported).