MUHAMMAD IBRAHIM ROWTHER v. SHAIK IBRAHIM ROWTHER.

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defendants' father gave jewels, cash and other moveables, worth about Rs. 4,000 to the mother of the second plaintiff immediately after marriage.

This is negatived by the Subordinate Judge and from this conclusion the High Court express no dissent.

The result then is that their Lordships will humbly advise His Majesty that the decree of the High Court should be set aside and the decree of the Subordinate Judge restored, with the variation that a day be fixed by the Court of first instance for the appointment of a Commissioner in lieu of February 7, 1914, and that the contesting defendants do pay to the plaintiffs their costs in the High Court.

Six years have elapsed since the date of the decree under appeal, and as no satisfactory explanation is given of this long delay there will be no order as to the costs of this Appeal.

Solicitors for appellants : *Barrow, Rogers* and *Nevill.*

A.M.T.

PRIVY COUNCIL.*

1922, January 31.

T. B. RAMACHANDRA RAO AND ANOTHER (PLAINTIFF),

v.

A. N. S. RAMACHANDRA RAO AND OTHERS (DEFENDANTS).

[On Appeal from the High Court of Judicature at Madras.]

Land Acquisition Act (I of 1894), sec. 31, sub-sec. (2)—Res judicata—Dispute as to title—Reference to Court—"In a former suit"—Code of Civil Procedure (V of 1908), sec. 11.

Where under the Land Acquisition Act (I of 1894), section 31, sub-section (2), a dispute as to the title to receive the compensa-

* *Present* :—Lord BUCKMASTER, Lord ATKINSON, Lord CARSON, Mr. AMEER ALI and Sir LAWRENCE JENKINS.

tion has been referred to the Court, a decree thereon not appealed from renders the question of title res judicata in a suit between the parties to the dispute, or those claiming under them, whether or not the decree is to be regarded as one "in a former suit" within the meaning of section 11 of the Code of Civil Procedure, 1908.

Rangoon Botatoung Company v. *The Collector, Rangoon*, (1913) I.L.R., 40 Calc., 21 ; L.R., 39 I.A., 197, explained and distinguished. *Balaram Bhramavatar Ray* v. *Sham Sunder Narendra*, (1896) I L.R., 23 Calc., 526 ; and *Trinayani Dassi* v. *Krishnalal De*, (1913) 17 C.W.N., 935, disapproved. *Hook* v. *Administrator-General of Bengal*, (1921) I.L.R., 48 Calc., 499 ; L.R., 48 I.A., 187, followed.

APPEAL No. 78 of 1920 from a judgment and decree (October 8, 1918) of the High Court, reversing a decree of the Additional Temporary Subordinate Judge of Tanjore.

The suit was brought by the appellants, the grandsons of one Ramajee Bavajee who died in 1858, to recover certain moveable and immoveable property from the respondents. The first respondent claimed title under a deed of settlement made in 1858 by Ramajee Bavajee in favour of his wife, Thulja Boyee, and under her will ; the other respondents were in possession under the first respondent. The appellants by their plaint contended that under the deed of settlement Thulja Boyee had only a life interest in the property in suit, and further that her title as against the appellants was res judicata by reason of a decision in 1897 in certain land acquisition proceedings.

The facts of the case appear from the judgment of the Judicial Committee.

The trial judge made a decree in the plaintiffs' favour, holding that upon the true construction of the deed of settlement Thulja Boyee had only a life interest in the property. With regard to an issue framed as to res judicata, after reference to decisions of the High

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Court at Madras, he held that the extent of the interest taken by Thulja Boyee was res judicata by the decree of 1897 in the land acquisition proceedings, but only to the extent of the properties which were the subject of those proceedings.

An Appeal to the High Court and cross-objections were heard by WALLIS, C.J., and SESHAGIRI AYYAR, J. The Appeal is reported at I.L.R., 42 Mad., 283. The learned Judges held that Thulja Boyee took an absolute estate in the property and was competent to dispose of it by will. The question of res judicata was raised by the Memorandum of Appeal but not by the cross-objections which related to mesne profits and other matters, and would appear from the above report not to have been argued before the High Court. The only reference to it in the judgments is in that of SESHAGIRI AYYAR, J., who said : "A portion of the property in suit is governed by the decision of this Court (vide Exhibit A, i.e., the judgment of 1897). To that extent the defendants' claim is barred by res judicata." The question was raised by the appellants' case in the present Appeal.

De Gruyther, K.C., and *Narasimham* for the appellants.—Under the deed of settlement of 1858 Thulja Boyee took only a life interest. It is conceded that where property is conferred by a Hindu on a woman by a document using words apt to confer an absolute estate, the fact that the donee is a woman does not cut down the estate given: *Surajmani* v. *Rabi Nath Ojha*(1), *Bhaidas Shivdas* v. *Bai Gulab*(2), *Sasiman Chowdhurain* v. *Shib Narayan Chowdhury*(3). It is, however, otherwise in the case of a simple gift by husband to wife. The authorities

(1) (1908) I.L.R., 30 All., 84 (P.C.); L.R., 35 I.A., 17.
(2) (1922) L.R., 49 I.A., 1.
(3) (1922) L.R., 49 I.A., 26.

show that in that case the wife does not take a heritable estate. The texts on this question are referred to in Mayne's Hindu Law, paragraph 664, and are set out in Sarkar's Vyavashtha Chandrika, Volume 2, page 510. There is on the question an absolute concensus of opinion in the authorities: *Koonjbehari Dhur* v. *Premchand Dutt*(1), *Atul Krishna Sircar* v. *Sanyasi Churn Sircar*(2), *Janna Das* v. *Ramantar Pande*(3), *Caralapathi Chunna Cunniah* v. *Cota Nammalwariah*(4), *Hirabai* v. *Lakshmibai*(5), *Motilal Mithalal* v. *The Advocate-General of Bombay*(6). Even if the effect of the gift was to confer a life estate, it did not give a right to alienate. Secondly, having regard to the decree made in 1897 in the land acquisition proceedings, the question of title was res judicata. The decision of the Board in *Rangoon Botatoung Company* v. *The Collector, Rangoon*(7), is distinguishable. That case related merely to the amount of the award; it does not apply where under section 31, sub-section (2) of the Land Acquisition Act, 1894, a dispute as to title has been referred to the Court, as defined by section 3 (*d*). That view is supported by *Chowakaran Makki* v. *Vayyaprath Kunhi Kutti Ali*(8). *Mahadevi* v. *Neelamani*(9), there distinguished, was wrongly decided. The decree of 1897 was a decision as to title; it cannot be regarded as a res judicata only as to that part of the property compulsorily acquired: *Badar Bee* v. *Habib Merican Noordin*(10). Even if the decree of 1897 was not made "in a former suit" within the meaning of section 11 of the Code of Civil Procedure, 1908, the principle of

(1) (1880) I.L.R., 5 Calc., 684.
(2) (1905) I.L.R., 22 Calc., 1051.
(3) (1905) I.L.R., 27 All., 364.
(4) (1910) I.L.R., 33 Mad., 91.
(5) (1887) I.L.R., 11 Bom., 573, 578.
(6) (1911) I.L.R., 35 Bom., 279.
(7) (1913) I.L.R., 40 Calc., 21; s.c. L.R., 39 I.A., 197.
(8) (1906) I.L.R., 29 Mad., 173.
(9) (1897) I.L.R., 20 Mad., 269.
(10) (1909) A.C., 615 (P.C.).

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Hook v. *Administrator-General of Bengal*(1) applies. [Reference was also made to *Ram Kirpal* v. *Rup Kuari*(2), and *Sheoparsan Singh* v. *Ramnandan Prasad Singh*(3).]

[Their Lordships desired that the question of res judicata should first be argued.]

Dube for the first respondent.—The decision in 1897 did not operate as a res judicata, having regard to the nature of the jurisdiction then exercised. A consideration of the provisions of the Land Acquisition Act shows that the functions exercised under it are purely administrative. By section 31 the decision as to title forms part of the award, so that the judgment in *Rangoon Botatoung Company* v. *The Collector, Rangoon*(4) applies in the present case. The analogy of a verdict and judgment upon an inquisition under the English Lands Clauses Acts applies, and that does not operate as a res judicata: Smith's Leading Cases, 12th Edition, Volume II, page 812. *Mahadevi* v. *Neelamani*(5) is in point, and was rightly decided. The respondents are further supported by *Trinayani Dassi* v. *Krishnalal De*(6), *Balaram Bhramavatar Ray* v. *Sham Sunder Narendra*(7), *Dirgaj Deo* v. *Kali Charan Singh*(8), and *Mulambath Kunhammad* v. *Parakat Kathirikutti*(9).

[A reply was not called for.]

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The JUDGMENT of their Lordships was delivered by Lord BUCKMASTER.—On August 6, 1858, Ramajee Bavajee Pandit, who died on August 10, 1858, executed a deed of settlement of all his moveable and immoveable properties. It is prefaced by a statement that he had

(1) (1921) I.L.R., 48 Calc., 499 (P.C.); L.R., 48 I.A., 187.
(2) (1884) I.L.R., 6 All., 269 (P.C.); L.R., 11 I.A., 37.
(3) (1916) I.L.R., 43 Calc., 694 (P.C.); L.R., 43 I.A., 91.
(4) (1913) I.L.R., 40 Calc., 21; s.c. L.R., 39 I.A., 197.
(5) (1897) I.L.R., 20 Mad., 259.
(6) (1913) 17 C.W.N., 935.
(7) (1898) I.L.R., 23 Calc., 526.
(8) (1907) I.L.R., 34 Calc., 466.
(9) (1916) 31 M.L.J., 827, 834.

adopted Panchapikes, the second son of Mahasubd Rajaram, and after various gifts and dispositions which are not material, it continued in these terms:

"Out of the remaining property, after deducting the above, my adopted son, to whom I have given the name of Bavajee Pandit, shall be entitled to and enjoy half of the property. Out of the remaining half of the property those two persons, namely (my) senior wife Sowbhagiavathy Kamatchi and junior wife Sowbhagiavathy Thulja shall take half and half."

In 1894, 1 acre and 74 cents of the land so given, and then in the possession of Thulja Boyee, was acquired by the Government. The usual proceedings for determining the amount of compensation appear to have taken place, and no dispute arose as to the award, but a question did arise as between Ramajee Bavajee Pandit, the adopted son, and the widow as to the character and extent of the estate that she took under the will. If she took absolutely, the money could be divided forthwith; but if she took a limited interest, her share would have to be invested. It was consequently necessary that this dispute should be determined in order that the compensation monies should be properly dealt with. Section 31, sub-section (2), of the Land Acquisition Act, 1894, expressly contemplates this position, for after referring in sub-section (1) to the payment of the compensation by the Collector to the persons interested, sub-section (2) provides that:

"if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted."

Section 18 does not define the Court; this is done by section 3 (*d*), which provides that a Court means a principal Civil Court of original jurisdiction, unless a special judicial officer within specified limits has been

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appointed to perform the functions of the Court under the Act. Section 32 further provides that when money has been deposited in Court under sub-section (2) of section 31, and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate it, the Court shall order the money to be invested as therein mentioned.

Now the dispute between Bavajee and the widow was plain upon the face of the document. It depended upon whether the deed had conferred an absolute heritable and alienable estate upon the widow, or whether she took either a limited Hindu widow's estate or a heritable estate which she was incapable of alienating. What the actual proceedings were that ensued between them is not plain, but they must have come before the District Court of Tanjore, for the grounds of appeal from the order of that Court are before their Lordships, and from these it appears that the District Judge had held that the widow had an absolute estate. From this decision Bavajee brought the appeal to the High Court of Judicature at Madras. Judgment was delivered by the High Court on the 13th July, 1897, by Sir ARTHUR COLLINS, C.J., and Mr. Justice SHEPHARD. Their judgment is short, and, as it throws considerable light upon the whole proceedings, it is desirable that it should be reproduced in full. It is as follows:

"The first question is what estate the widow Thulja Boyee took under . . . the gift of 1858. We cannot agree with the District Judge that the law is unsettled on the question of such gifts. There being no indication of intention to give a large estate, we must assume that the husband intended that a widow's estate only should pass. This being so it is quite clear that sections 31 and 32 of the Act apply. The order must be set aside as the parties are not agreed as to the mode in which the money should be invested. We must direct the District Judge to pass

orders under the provisions of section 32. Each party to bear his own costs of this Appeal."

On June 10, 1911, and again on January 11, 1916, Thulja Boyee executed wills and bequeathed all her moveable and immoveable properties to the first respondent; she died on April 2, 1916. The adopted son, Bavajee Ramajee Pandit, also died at a date subsequent to the decision of the High Court, but the exact time is not stated, nor is it material, and the present appellant and his brother Jeevanna Rao, now deceased, were his two sons. On July 12, 1916, they instituted the suit out of which these proceedings have arisen against the claimants under Thulja's will, alleging that she had only a limited estate under the deed of settlement, and that she had no power to dispose of the properties by will. The learned Subordinate Judge decided in their favour, but this decision was reversed by the High Court, from whose decree the present appeal has been brought. Both the judgments of the Subordinate Judge and the High Court depended upon the true effect of the deed of settlement, but for reasons which their Lordships will shortly explain, they do not think that this question was open to either of the Courts.

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Their Lordships do not, therefore, propose to embark upon the consideration of what the effect of the deed of gift in favour of Thulja Boyee might be correctly determined to be, but as some misapprehension appears to exist as to the effect of certain decisions of the Board, and notably *Surajmani* v. *Rabi Nath Ojha* (1), their Lordships think it desirable to remove this doubt, lest error should creep into the administration of the law in India with regard to the rights of a Hindu widow. In the case referred to, when originally heard before the High Court,

(1) (1908) I.L.R., 30 All., 84 (P.C.); L.R., 35 I.A., 17.

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Surajmani v. *Rabi Nath*(1) it had been stated that under the Hindu law in the case of a gift of immoveable property to a Hindu widow, she had no power to alienate unless such power was expressly conferred. The decision of this Board did no more than establish that that proposition was not accurate, and that it was possible by the use of words of sufficient amplitude to convey in the terms of the gift itself the fullest rights of ownership, including, of course, the power to alienate, which the High Court had thought required to be added by express declaration. In that case, it is true that there is some comparison drawn between the gift to a widow and a gift to a person not under disability, but that was not the foundation of the decision, which depended entirely upon the wide meaning attributed to the words in which the gift to the widow was clothed. More recent decisions of this Board in *Sasiman Chowdhurain* v. *Shib Narayan Chowdhury*(2) and *Bhaidas Shivdas* v. *Bai Gulab* (3) do nothing but repeat this same proposition in other words. The importance of preventing confusion due to the contrasting of different phrases used in distinct cases to express the same idea has led their Lordships to make this explanation, but the points argued as to the effect of the gift in the present case are not now open to consideration, for in their Lordships' opinion the decision given on July 13, 1897, by the High Court at Madras is a clear and complete determination as between the parties to that suit and those claiming under them, which the present litigants cannot dispute.

It is urged on behalf of the respondents that the judgment cannot be so regarded because it arose out of proceedings under the Land Acquisition Act, 1894, and for the purpose of their arguments they rely upon the

(1) (1903) I.L.R., 25 All., 351. (2) (1922) L.R., 49 I.A., 25.
(3) (1922) L.R., 49 I.A., 1.

case of *Rangoon Botatoung Company* v. *The Collector, Rangoon*(1). There appears to be some misapprehension in the Courts in India as to the effect of this authority which it is desirable should be removed. Under the Land Acquisition Act there are two perfectly separate and distinct forms of procedure contemplated. The first is that necessary for fixing the amount of the compensation and this is described as being an award. By section 54 an appeal from that award or of any part of the award is given to the High Court. *Rangoon Botatoung Company*, v. *The Collector, Rangoon*(1), decided that in those circumstances the appeal so given was the only one open to the parties, and that even if appealed against, the award still retained its characteristics and was incapable of further appeal. The argument which succeeded in that case emphasizes the distinction between an award and a decree, and the judgment mentions this in terms by stating that the appellants, although admitted to the High Court, could not have the right to carry an award made under an arbitration as to the value of land taken for public purposes up to this Board as if it were a decree of the High Court made in the course of its original jurisdiction. The manifest inconvenience that would attend any such proceeding is also pointed out, but neither this judgment, nor any other judgment of this Board affects the question of an Appeal on the totally different proceedings that arise when there is a dispute as between the persons claiming compensation involving, as it does in this case, a difficult question of title. When once the award as to the amount has become final, all questions as to fixing of compensation are then at an end; the duty of the Collector in case of dispute as to the relative rights of the persons together entitled to the money is to place the money

(1) (1913) I.L.R., 40 Calc., 21 (P.C.); L.R., 39 I.A., 197.

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under the control of the Court, and the parties then can proceed to litigate in the ordinary way to determine what their right and title to the property may be. That is exactly what occurred in the present case. How the proceedings were commenced is a matter that is not material provided that they were instituted in the manner that gave the Court jurisdiction, for they ended in a decree made by the High Court and appealable to this Board. It is true that in the case of *Trinayani Dassi* v. *Krishna lal De*(1), following an earlier case, *Balaram Bhramavatar Ray* v. *Sham Sunder Narenda*(2), it was decided that an order under section 32 may appropriately be deemed as an integral part of the award made by the Court, but their Lordships regard this as a misapprehension as to the meaning of the award. The award as constituted by Statute is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information, meaning thereby people whose interests are not in dispute, but from the moment when the sum has been deposited in Court under section 31, sub-section (2), the functions of the award have ceased; and all that is left is a dispute between interested people as to the extent of their interest. Such dispute forms no part of the award, and it would indeed be strange if a controversy between two people as to the nature of their respective interests in a piece of land should enjoy certain rights of appeal which would be wholly taken away when the piece of land was represented by a sum of money paid into Court. There has in the present case been a clear decision upon the very point now in dispute, which cannot be reopened. The High Court appear only to have regarded the matter as concluded to the extent of the compensation money,

(1) (1913) 17 C.W.N., 935. (2) (1896) I.L.R., 23 Calc., 526.

but that is not the true view of what occurred, for as pointed out in *Badar Bee* v. *Habib Merican Noordin*(1), it is not competent for the Court, in the case of the same question arising between the same parties, to review a previous decision, no longer open to appeal, given by another Court having jurisdiction to try the second case. If the decision was wrong, it ought to have been appealed from in due time. Nor in such circumstances can the interested parties be heard to say that the value of the subject matter on which the former decision was pronounced was comparatively so trifling that it was not worth their while to appeal from it. If such a plea were admissible, there would be no finality in litigation. The importance of a judicial decision is not to be measured by the pecuniary value of the particular item in dispute. It has been suggested that the decision was not in a former suit, but whether this were so or not makes no difference, for it has been recently pointed out by this Board, in *Hook* v. *Administrator-General of Bengal*(2), that the principle which prevents the same case being twice litigated is of general application and is not limited by the specific words of the Code in this respect. Their Lordships will therefore humbly advise His Majesty that the decree appealed from be reversed, and the decree of the Subordinate Judge restored with costs here and in the Courts below.

Solicitor for appellant: *Douglas Grant.*

Solicitors for first respondent: *Barrow, Rogers* and *Nevill.*

A.M.T.

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(1) (1909) A.C., 615 (P.C.)
(2) (1921) I.L.R., 48 Calc., 499; L.R., 48 I.A., 187.