

APPELLATE CIVIL.

Before Mr. Justice Varadachariar.

RANGACHARIAR AND NINE OTHERS (PLAINTIFFS 1 TO 10),
PETITIONERS,

1935,
October 18.

v.

J. RANGASWAMI AYYANGAR AND SIXTEEN OTHERS
(DEFENDANTS AND ELEVENTH PLAINTIFF), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), sec. 11—Civil revision petition or appeal against a judgment—Later final judgment inter partes respecting same title during pendency of—Res judicata, if.

A suit to establish the title of the plaintiffs as nanja ayacutdars to the *vizhal* in a tank was dismissed on a finding against that title. After the decision of that suit in the trial Court and during the pendency of a civil revision petition preferred against the same, a decree was passed in another representative suit establishing the title of the nanja ayacutdars to the *vizhal* in the said tank and that decree was allowed to become final.

Held that the decree in the representative suit constituted the question of title *res judicata* even for the purpose of the civil revision petition.

There is nothing in the observations of the Full Bench in *Panchanada Velan v. Vaithinatha Sastrial*, (1905) I.L.R. 29 Mad. 333 (F.B.), to exclude from the operation of the rule of *res judicata* judgments coming into existence during the pendency of proceedings by way of appeal or revision, if such judgments are allowed to become final.

Mariamnissa Bibi v. Joynab Bibi, (1906) I.L.R. 33 Cal. 1101, 1106, 1116, 1117, relied upon.

PETITION under section 25 of Act IX of 1887 and section 107 of the Government of India Act, praying the High Court to revise the decree of the

* Civil Revision Petition No. 1297 of 1931.

RANGACHARIAR
 v.
 RANGASWAMI
 AYYANGAR.

Court of the District Munsif of Arni in Original
 Suit No. 279 of 1927.

O. P. Venkataraghavachari for petitioners.

A. C. Sampath Ayyangar for respondents.

JUDGMENT.

The only question of law arising in the case is the plea of *res judicata* raised on the strength of the compromise decree in Original Suit No. 534 of 1930 on the file of the District Munsif's Court of Tiruvattipuram. That was a representative suit and the decree therein establishes the title of the nanja ayacutdars to the *vizhal* in the suit tank. The District Munsif dismissed the present suit on a finding under issues 1 and 4 against that title. On behalf of the petitioners it has been contended that, as the decree in Original Suit No. 534 of 1930 has become final, it constitutes the question of title *res judicata* even for the purpose of this civil revision petition, though that decree was given only after the decision of this suit in the trial Court. The balance of authority is in favour of upholding the plea of *res judicata*; see *Mariamnissa Bibi v. Joynab Bibi*(1). Though the Full Bench decision in *Panchanada Velan v. Vaithinatha Sastrial*(2) approves of the case in *Abdul Majid v. Jew Narain Mahto* (3), the reasoning relates only to judgments in suits tried *together* and there is nothing in the observations of the Full Bench to exclude from the operation of the rule of *res judicata* judgments coming into existence during

(1) (1906) I.L.R. 33 Cal. 1101, 1106, 1116, 1117.

(2) (1905) I.L.R. 29 Mad. 333 (F.B.).

(3) (1888) I.L.R. 16 Cal. 233.

the pendency of proceedings by way of appeal or revision, if such judgments are allowed to become final. The findings of the first Court on the first issue and the fourth issue are accordingly set aside and that Court is directed to record a finding on those issues in accordance with the decree in Original Suit No. 534 of 1930 referred to above. The decree of the lower Court is set aside and the case sent back for disposal after dealing with issues 2 and 5. In the circumstances, I make no order as to the costs of this civil revision petition.

RANGACHARIAR
v.
RANGASWAMI
AYYANGAR.

A.S.V.

APPELLATE CIVIL.

Before Mr. Justice Burn and Mr. Justice K. S. Menon.

MUHAMMAD GOSUKANI AND THREE OTHERS (FIRST PLAINTIFF, DEFENDANTS 1 AND 2 AND SECOND PLAINTIFF),

1935,
October 18.

APPELLANTS,

v.

MUHAMMAD SEKKA MARACAYAR AND ELEVEN OTHERS (DEFENDANTS 3 TO 6, 8, 12, 13, 14 AND NIL), RESPONDENTS.*

*Madras Estates Land Act (I of 1908), ss. 6 (6) and 130—
Ijaradar—Rent sale—Purchase of holding by ijaradar at—Validity of—Effect of—Lease for fasli in which arrears accrued—Expiry of—Sale of holding for rent arrears after—Ijaradar's right of—Ijaradar continuing to be a landholder at time of sale under a fresh valid lease.*

Where an ijaradar brings to sale for arrears of rent a holding comprised in his ijara and purchases it himself, the sale is not void on the ground that at such a sale there is

* Letters Patent Appeal No. 7 of 1934.