

APPELLATE CIVIL.

1875.
August 20.*(Mr. Justice Turner, Officiating Chief Justice, and Mr. Justice Spankie.)*BALDEO SAHAI (PLAINTIFF) v. BATESHAR SINGH AND OTHERS
(DEFENDANTS.) **Act VIII of 1859, s. 2—Res judicata.*

When a plaintiff claims an estate, and the defendant, being in possession, and knowing that he has two grounds of defence raises only one, he shall not, in the event of the plaintiff obtaining a decree, be permitted to sue on the other ground to recover possession from the plaintiff. (*Woomatara Debia, v. Unnepoorna Dussee* (1).

Where, therefore, the defendants purchased an estate in the plaintiff's possession and sued him to recover possession of it, and the plaintiff resisted the suit merely on the ground that he was the auction-purchaser of it, and the defendants obtained a decree, and the plaintiff then sued claiming a right of pre-emption in respect of the property, a claim which he might have asserted in reply to the former suit, *held* that he was debarred from suing to enforce such claim.

THE defendants purchased on the 18th September, 1873, a share in manza Tajpur which was in the possession of the plaintiff. The plaintiff denied the title of their vendor, alleging that he was in possession of the property in virtue of its purchase at an auction-sale. The defendants accordingly brought a suit against him to recover possession, by the establishment of the title of their vendor. The plaintiff pleaded his title as auction-purchaser. The defendants obtained a decree for the possession of the property, and applied for its execution, upon which the plaintiff instituted the present suit, claiming a right of pre-emption in respect of the property, basing the claim on a condition in the village administration-paper to the effect that it was competent to each proprietor to sell his own share, but so long as an *haq shafawala* (pre-emptor) was willing to buy it, it must not be sold to a stranger. The defendants pleaded that the plaintiff was not in a position to advance a right of pre-emption, because he had neglected to do so in the former suit, and merely impugned the title of their vendor.

(1) 11 B. L. R. P. C., 158.

* Special Appeal, No. 18 of 1875, from a decree of the Subordinate Judge of Ghazipur, dated the 30th September, 1874, reversing a decree of the Munsif of Ballia, dated the 15th August, 1874.

1873.

BALDEO SA-
HAI
v.
BATHSHAR
SINGH.

The first Court held that the plaintiff was entitled to maintain the suit, notwithstanding his omission to set up his pre-emptive title in the previous suit; and decreed the claim. The lower appellate Court dismissed the suit on independent grounds which it is immaterial for the purposes of this report to state.

On special appeal by the plaintiff to the High Court the defendants again contended that the plaintiff was estopped from suing to enforce the right of pre-emption claimed by his omission to plead the right as an answer to the former suit.

Munshi *Hanumán Parshád*, Munshi *Súkh Rám*, and Lala *Lalta Parshád* for the appellant.

The *Senior Government Pleader* (*Lala Júda Parshád*) and Pandit *Bishambar Náth* for the respondents.

The judgment of the Court was as follows:—

In 1873 the respondents purchased the share of which the appellant claims pre-emption. The appellant denied the title of the vendor, but the respondents instituted a suit against the appellant, and having succeeded in establishing their vendor's title, they obtained a decree for possession. The appellant then instituted the present suit to have the sale to the respondents set aside, and a sale concluded in his favor as pre-emptor. It is contended that, the respondents having succeeded in obtaining a decree for possession in a suit to which the appellant was a party, he is now debarred from suing to enforce a claim which he might have asserted in reply to the claim formerly made by the respondents, and decreed in their favor. We admit the validity of the plea. It would have been a good answer to the claim then advanced that the sale on which it was founded was invalid, in that the defendant was entitled to a prior right of purchase and ready to exercise it. In *Srimut Rajah Moottoo Vijaya v. Katama Natchiar* (1), it was declared by the Privy Council that, "when a plaintiff claims an estate, and the defendant, being in possession, resists that claim, he is bound to resist it upon all the grounds that it is possible to him, according to his knowledge, then to bring forward," and that, if he fails to do so, he is estopped from

(1) 11 Moore's Ind. App., at p. 73.

asserting any of them thereafter. This dictum was cited and re-affirmed in *Woomatara Debia v. Unnopoorna Dasse* (1), decided by the Privy Council on May 13th, 1873. We must, then, allow the plea urged by the respondents and dismiss this appeal with costs. (2).

1875.

BALDRO SA-
HAI
v.
BATESHAR
SINGH.

APPELLATE CIVIL.

1875.

August 26.

(*Mr. Justice Turner, Officiating Chief Justice, and Mr. Justice Oldfield.*)

BALDRO DAS (PLAINTIFF) v. SHAM LAL (DEFENDANT).*

Hindú Law.—Undivided Hindú Family—Ancestral Immoveable property—Rights of Father and Son.

The sons in an undivided Hindú family, although they have a proprietary right in the paternal and ancestral estate, have not independent dominion.

Where, therefore, the plaintiff sued to eject the defendant, his son, from a portion of a house, partly self-acquired by the plaintiff and partly ancestral property, in which the defendant was living against the plaintiff's will, the Court decreed the claim.

THE plaintiff and the defendant, Hindús, were father and son. The plaintiff sued to eject his son from a portion of a house of which he had taken possession on its being vacated by a tenant. The defendant replied that the plaintiff had no right to eject him, the house being ancestral property, in which father and son had equal rights.

The first Court found that a portion of the house was ancestral property, and a portion acquired by purchase by the plaintiff from his brother, and decreed the claim, holding that, under Hindú law, a son could not enforce a right to possession of any property, whether ancestral or self-acquired, in his father's lifetime. The lower appellate Court dismissed the suit on the ground that, under Hindú law, sons have equal rights with their fathers in immoveable ancestral property.

(1) 11 B. L. R. P. C., at. p 169.

(2) See *Maktum Valad Mohidin v. Imám Valad Mohidin*, 10 Bom. H. C. R. 293, and *Janaki Annal v. Kámalathammal*, 7 Mad. H. C. R. 263.

* Special Appeal, No. 185 of 1875, from a decree of the Subordinate Judge of Moradabád, dated the 31st December, 1874, reversing a decree of the Munsif, dated the 14th May, 1874.