

of that Court would, by reason of the provisions of section 13 of the Code of Civil Procedure, have barred the trial of the same issues in the present suit. The Assistant Collector chose to pursue the second course, and decided the matter which is in issue in this suit. By the provisions of section 114 of Act No. XIX of 1873, his decision must be held to be the decision of a Court of Civil Judicature of first instance, that is, of the Civil Court which would have tried the question in dispute between the parties had the Assistant Collector referred them to a Civil Court under section 113, instead of enquiring into the merits of the objection himself. As I have said above, the Civil Court which would have tried the question, had the parties been referred to it, would have been the same Court which had jurisdiction to try the present suit. Therefore the decision of the Assistant Collector must be held to be the decision of a Civil Court of jurisdiction competent to try the present suit, and as such, it operates as *res judicata* under the 13th section of the Code of Civil Procedure.

It seems to me to be wholly immaterial for the purposes of the question before us that the decision of the Assistant Collector may have been founded on crude and erroneous notions of law, and that he was personally incompetent by reason of want of jurisdiction to try the present suit.

For the above reasons I agree in the decree and order proposed by my learned colleague.

BLAIR, J.—I concur in both the judgments.

Appeal dismissed.

Before Mr. Justice Banerji.

AHMAD ALI (PLAINTIFF) v. NAJABAT KHAN AND OTHERS (DEFENDANTS),*
*Civil Procedure Code, section 13—Res judicata—Parties to subsequent suit arrayed
 on the same side as co-defendants in previous suit.*

Where an adjudication between the defendants is necessary to give the appropriate relief to the plaintiff there must be such an adjudication, and in such a case the adjudication will be *res judicata* between the defendants as well as between

1895.

HAR CHARAN
 SINGH
 v
 HAR SHAN-
 KAR SINGH.

1895.

August 3.

* Second Appeal No. 918 of 1894, from a decree of H. Bateman, Esq., District Judge of Saharanpur, dated the 4th May 1894, confirming a decree of Pandit Kanhya Lal, Munsif of Saharanpur, dated the 23rd December 1893.

1895.

AHMAD ALI
v.
NAJABAT
KHEAN.

the plaintiff and the defendants. But for this effect to arise there must be a conflict of interests amongst the defendants and a judgment defining the real rights and obligations of the defendants *inter se*. Without necessity the judgment will not be *res judicata* amongst the defendants. *Ram Chandrá Narayan v. Narayan Mahadev* (1) followed. *Cottingham v. Earl of Shrewsbury* (2) referred to.

In this case the plaintiff sued to recover possession of $3\frac{1}{4}$ shares out of 12 shares in certain immovable property, alleging that the defendants were in wrongful possession of the same.

The two principal defendants pleaded that the plaintiff and the defendants were joint owners of 10 shares out of 12 shares in the property in dispute in equal shares, that out of the plaintiff's share $1\frac{1}{4}$ shares had been sold by auction and the remainder was admittedly in the plaintiff's possession; that the plaintiff had consequently no cause of action, and that the claim was barred by section 13 of the Code of Civil Procedure.

The Court of first instance (Munsif of Saháranpur) dismissed the plaintiff's suit, holding that it was not proved that the defendants were in possession of any larger share in the property in question than that to which they were entitled.

The plaintiff appealed, and the lower appellate Court (District Judge of Saháranpur) dismissed the appeal as barred by the principle of *res judicata* by reason of the judgment in a previous suit, in which suit, however, the parties to the present suit were arranged on the same side as defendants.

The plaintiff thereupon appealed to the High Court

Munshi *Kabindi Prasad*, for the appellant.

Maulvi *Ghulam Mujtaba*, for the respondents.

BANERJI, J.—The first contention raised on behalf of the appellants is that the judgment of the lower appellate Court does not fulfil the requirements of section 574 of the Code of Civil Procedure. The judgment, no doubt, is a feeble compliance with the provisions of that section, and, like most other judgments of the learned Judge, is too brief to be intelligible, much less lucid.

(1) I. L. R. 11, Bom. 216.

(2) 3 Hare's Rep. 627.

It is impossible to know the facts of the case from the judgment, and the points for determination can only be gathered from the conclusion at which the learned Judge arrived. It would certainly be more satisfactory were the learned Judge to pay more attention to the provisions of section 57-4 than he often does and than he has done in this case. I cannot, however, say that the judgment in this case is in violation of that section, and I do not see sufficient reason to interfere with the decree on that ground.

The next contention, namely that the Court below has erroneously held the 13th section of the Code of Civil Procedure to be a bar to the appellant's suit, must prevail. The judgment which has been held to operate as *res judicata* was dated the 11th of February 1890. It was not passed between the parties to the present suit or between those from whom they derive title. It was passed in a suit in which the parties to the present action were ranged on the same side as co-defendants. A judgment to operate as *res judicata* under section 13 of the Code of Civil Procedure must be between the same parties or between parties under whom they or any of them claim. A previous suit in which the parties to the subsequent suit were co-defendants cannot ordinarily be regarded as a suit between the same parties. It is true that in some cases an adjudication between co-defendants would conclude them in a subsequent litigation. The principle governing such cases was thus stated in *Cottingham v. Earl of Shrewsbury* (1) by Wigram, V.C. :— "If a plaintiff cannot get at his right without trying and deciding a case between co-defendants, the Court will try and decide that case and the co-defendants will be bound. But if the relief given to the plaintiff does not require or involve a decision of any case between co-defendants, the co-defendants will not be bound as between each other by any proceeding which may be necessary only to the decree the plaintiff obtains." Following this case it was held by West, J. in *Ram Chandra Narayan v. Narayan Mahadev* (2) that "where an adjudication between the defendants is necessary to give the appropriate relief to the

1895.

AHMAD ALI

v.

NAJABAT
KHAN.

(1) I. L. R., 11 Bom., 216.

(2) 3 Hare, 627 : at p. 638.

1895.

AHMAD ALI
v.
NAJABAT
KHAN.

plaintiff there must be such an adjudication, and in such a case the adjudication will be *res judicata* between the defendants as well as between the plaintiff and defendants. But for this effect to arise there must be a conflict of interest amongst the defendants and a judgment defining the real rights and obligations of the defendants *inter se*. Without necessity the judgment will not be *res judicata* amongst the defendants." The rule laid down in the above case is in my judgment the correct rule as to the effect of a previous judgment as between co-defendants.

Applying this rule to the present case, it is clear that the previous judgment on which the Court below has relied cannot operate as *res judicata* between the parties. The suit in which that judgment was passed no doubt related to the property now in dispute, and the issue which arose in the present case was also raised in that case, namely, whether the share claimed originally belonged to the present plaintiff Ahmad Ali. But that was a suit brought by the wife and the son of the present plaintiff on the allegation that a gift had been made in their favour by the now plaintiff Ahmad Ali. The validity of the gift and the title of the donor to make it were put in issue by the real defendants. Ahmad Ali was only a *pro forma* defendant, and he did not enter appearance. The Court found against the plaintiffs to that suit. The issues which were determined in that suit arose and were tried between the plaintiffs and the principal defendants. If the case of the plaintiffs to that suit was true, the present plaintiff had ceased to have any interest in the property in suit, and there was no conflict of interest between him and the other defendants, an adjudication of which was necessary. The real contest was between the plaintiffs to that suit and the principal defendants. The judgment passed in that suit cannot therefore operate as a bar to the present suit. The ruling of the Madras High Court in *Madhavi v. Kedu* (1) to which the learned Judge below has referred, is perfectly distinguishable and has no application to the present case.

(1) I. L. R. 15, Mad. 264.

As the appeal to the Court below was decided upon a preliminary point, and its decision on that point was erroneous, I set aside the decree below and remand the case to the lower appellate Court under section 562 of the Code of Civil Procedure with directions to readmit the appeal under its original number in the register and to try it on the merits. Costs here and hitherto will abide the event.

1895

AHMAD ALI
v.
NAJABAT
KHAN.

Appeal decreed and cause remanded.

Before Mr. Justice Blair and Mr. Justice Burkitt.

NAND KISHORE LAL (PLAINTIFF) v. AHMAD ATA AND ANOTHER (DEFENDANTS).
ANMOLI BIBI AND ANOTHER (PLAINTIFFS) v. AHMAD ATA AND ANOTHER
(DEFENDANTS).

1895
August 3.

BHOLE BIBI (PLAINTIFF) v. AHMAD ATA AND ANOTHER (DEFENDANTS).
*Benamidar—Suit by benamidar on title for possession of immovable property—
Right of benamidar to sue in his own name.*

A *benamidar* suing for the recovery of immovable property on title can sue in his own name, and when such a suit is instituted by a *benamidar* it must be held to have been instituted with the consent and approval of the beneficiary, against whom any adverse decision on the title set up will take effect as a *res judicata*. *Prasunno Coomar Roy Chowdhry v. Gooroo Churn Sein* (1) and *Hari Gobind Adhikari v. Akhoy Kumar Mozumdar* (2) dissented from. *Fuseelin Beebee v. Omdah Beebee* (3) and *Meheroonissa Bibee v. Her Churn Bose* (4) distinguished. *Gapeekrist Gosain v. Gungapersaud Gosain* (5) explained. *Ram Bhurosee Singh v. Bissesser Narain Singh* (6). *Gopi Nath Chobey v. Bhugvat Pershad* (7) and *Shangara v. Krishnan* (8) referred to.

THIS was a suit upon a deed of sale to recover possession of a share in zamindari property. The plaintiff, Nand Kishore Lal, stated in his plaint that one Musammat Jokhan Bibi had at one time been in proprietary possession of a sixteen anna mahál of which the property in suit formed part; that on the death of Jokhan Bibi this sixteen anna mahál descended in equal portions

* Second Appeal Nos. 920, 1081 and 1245 of 1893, from decrees of L. M. Thornton, Esq., District Judge of Jaunpur, dated the 8th June 1893, confirming the decrees of Rai Anant Ram, Subordinate Judge of Jaunpur, dated the 23rd December 1892.

(1) 3 W. R., 159.

(2) I. L. R., 16 Calc., 364.

(3) 10 W. R., 469.

(4) 10 W. R., 220.

(5) 6 Moo. I. A., 53.

(6) 18 W. R., 454.

(7) I. L. R., 10 Calc., 697.

(8) I. L. R., 15 Mad., 267.