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the meaning of the last paragraph of section 335 of the Code of Civil Procedure, it was properly stamped with a Court-fee of Rs. 10, and this was the view taken by the Bombay High Court in *Dhondo Sakharan Kulkarni* v. *Gobind Babaji Kulkarni* (1). In that case there was a distinct prayer for possession, and the Bombay Court held that, notwithstanding such prayer, the amount of Court-fee paid, *i.e.* Rs. 10, was sufficient. We are, however, not called upon to decide this point, because if the suit be treated as a suit for possession, the plaint was properly stamped under clause v, section 7 of the Court Fees Act. Further, as the claim sought not only a declaration of right but possession also, there was a prayer for a declaratory decree and consequential relief, and therefore the Court-fee was payable under clause IV *(c)* of section 7 of the Court Fees Act. In any aspect of the case the amount of Court-fee paid was sufficient or more than sufficient. The fact of the plaintiff asking for a declaration of his title and also to have the order passed under section 335 set aside was not asking for several declarations or reliefs, inasmuch as the order sought to be set aside negatived his right, and the effect of the declaration of his right would necessarily be the setting aside of that order. We think that the Subordinate Judge was wrong in dismissing the appeal. We set aside his decree and remand the case under section 562 of the Code of Civil Procedure to the lower appellate Court with directions to try the appeal before it on the merits. The appellant will have his costs of this appeal. Other costs will abide the event.

Appeal decreed and cause remanded.

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June 12.

Before Mr. Justice Burkitt and Mr. Justice Henderson.

CHAJJU (DEFENDANT) *v.* UMRAO SINGH AND OTHERS (PLAINTIFFS).*

Civil Procedure Code, section 13—Res judicata—*Under what circumstances a decision may be* res judicata *as between defendants—Civil Procedure Code, section* 544.

Where an adjudication between defendants is necessary to give the appropriate relief to the plaintiff, the adjudication will be *res judicata* between the defendants as well as between the plaintiff and defendants. But for this

* Second Appeal No. 854 of 1897 from a decree of Babu Jai Lal, Additional Subordinate Judge of Meerut, dated 31st July 1897, confirming a decree of Babu Udit Narain Singh, Additional Munsif of Meerut, dated the 26th November 1895.

(1) (1884) I. L. R., 9 Bom., 20.

effect to arise, there must be a conflict of interest between the defendants and a judgment defining the real rights and obligations of the defendants *inter se*. Without necessity a judgment will not be *res judicata* amongst defendants, nor will it be *res judicata* amongst them by mere inference from the fact that they have been collectively defeated in resisting a claim made against them as a group. *Ramchandra Narayan* v. *Narayan Mahadev* (1), *Ahmad Ali* v. *Najabat Khan* (2), and *Madhavi* v. *Kelu* (3), followed. *Bishnath Singh* v. *Bisheshar Singh* (4) referred to.

Section 544 of the Code of Civil Procedure does not, unless the decree itself proceeds on a ground common to all the defendants, enable an appellate Court to decide, upon a ground which it considers to be common to all the defendants, an appeal preferred by some only of such defendants and to reverse the decree of the Court below in favour of all the defendants. *Puran Mal* v. *Krant Singh* (5) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Sundar Lal*, for the appellants.

Babu *Jogindro Nath Chaudhri* (for whom Babu *Satish Chandar Banerji*) for the respondents.

HENDERSON, J.—In 1870 one Sheo Singh died leaving a widow, Musammat Golab, and two grandsons, by a deceased daughter, named Ganga and Jamna. In 1875 his widow died. It was alleged that Sheo Singh at the time of his death was possessed of a portion of a house in which he, and after him his widow, resided.

In 1877 his nephews, the sons of a deceased brother, instituted a suit in which they alleged that they had been joint with Sheo Singh and claimed to eject Chajju, the appellant before us, from the portion of the house said to have been Sheo Singh's. Chajju was the brother of Musammat Golab, and the plaintiffs in that suit, while admitting that he was in possession, averred that he had merely been allowed out of grace by Sheo Singh and Musammat Golab to live in the house.

Chajju, in his written statement, in the first place, pleaded that the plaintiffs had no right to sue, as the two grandsons, and not the plaintiffs, were the heirs of Sheo Singh. He further pleaded that the property in suit was his ancestral property, and that it had been in the possession of himself and his predecessors in title for upwards of a hundred years.

(1) (1886) I. L. R., 11 Bom., 216.
(2) (1895) I. L. R., 18 All., 65.
(3) (1892) I. L. R., 15 Mad., 264.
(4) Weekly Notes, 1891, p. 34.
(5) (1897) I. L. R., 20 All., 8.

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Upon that written statement being filed Ganga and Jamna were added as defendants. They in their written statement alleged (1) that they, and not the plaintiffs, were entitled to the property in suit as the heirs of Sheo Singh, as Sheo Singh had never been joint with the plaintiffs; and (2) that the property in suit belonged to Sheo Singh. They also stated that when the suit was instituted they had themselves been about to take proceedings against their co-defendant to obtain possession of the property.

Having regard to the manner in which Chajju put forward his defence and to the fact that he was the brother of the grandmother of his co-defendants, it is difficult to avoid the suggestion that he was really colluding with them to defeat the plaintiffs' suit, and that his claim to the property in suit was put forward to meet the plaintiffs' case if the other ground should fail.

The defendant Chajju being in possession, the only real and substantial issues were whether the plaintiffs had a title better than that of the defendants, and if so, whether they had been in possession within 12 years from the institution of the suit.

The Munsif on the 24th November 1877, gave the plaintiffs a decree, having by his judgment found (1) that the plaintiffs had been joint with Sheo Singh and were therefore entitled to the property in suit in preference to his grandsons, (2) that the property in suit belonged to Sheo Singh, and (3) that Chajju's possession had been merely permissive. Against that decree Ganga and Jamna appealed, but, pending the hearing, Jamna withdrew from the appeal. Chajju did not appeal and was not made a party to the appeal preferred by his co-defendants.

The appeal was decided on the 20th May 1878, when the appellate Court, being of opinion that the plaintiffs had never been joint with Sheo Singh and were therefore not entitled as against Ganga and Jamna to the property of Sheo Singh, set aside the decree of the Munsif and dismissed the suit.

On the 20th February 1895, Ganga and Jamna having in the meantime died without leaving issue, the present plaintiffs-respondents who are the representatives of a deceased brother of the father of Ganga and Jamna, instituted the present suit against Chajju to recover possession of the property which had been the subject-matter of the previous suit on the ground that it

belonged to Sheo Sihgh, whose heirs they claimed to be. A description of the portion of the house claimed is given in the prayer of their plaint. The plaint alleged that Chajju had continued to remain in permissive possession or occupation until a short time before the institution of the suit, when the plaintiffs called upon him to give up possession and he refused to do so.

Chajju set up the defence that the property was his ancestral property and had been in his possession for more than 12 years adversely to the plaintiffs.

In the lower Courts various issues were raised, but not determined, as both Courts were of opinion that Chajju not having appealed against the decree of the 24th November 1877, in the previous suit, was not bound by the decree of the 20th May 1878, which, setting side that decree, dismissed the suit. They considered that Chajju was still bound by the decree of the 24th November 1877, against which he had not appealed, and that as between Chajju and his co-defendants Ganga and Jamna, and through them the plaintiffs-respondents, the findings (1) that the property in suit belonged to Sheo Singh and not to Chajju, and (2) that Chajju had merely been in permissive possession were *res adjudicata*. The first Court accordingly made a decree dismissing the suit and the lower appellate Court confirmed that decree.

In my opinion the lower Courts were wrong in treating these as *res adjudicata*.

We were referred to a Full Bench decision of this Court in S. A. 830 of 1886, in which it was broadly laid down by Edge, C.J., that there can be no *res adjudicata* as between co-defendants. For the purposes of that case it was unnecessary to lay down any principle in terms so very general. It was sufficient for the Court to have held that in the case before it the plea of *res adjudicata* was a bad plea, and I am not disposed to accept the broad proposition laid down by the Full Bench. Moreover, I find in a later case *Bishnath Singh* v. *Bisheshar Singh* (1) Edge, C J., admitted that in exceptional cases there might be *res adjudicata* between co-defendants. We are therefore not precluded by the Full Bench decision from considering the only

(1) Weekly Notes, 1891, p. 34.

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question raised before us, namely, whether the appellant Chajju was precluded from going into the defence raised by him by reason of section 13 of the Code of Civil Procedure.

In *Ramchandra Narayan* v. *Narayan Mahadev* (1) the rule as to *res adjudicata* between co-defendants was thus stated:—"Where an adjudication between defendants is necessary to give "the appropriate relief to the plaintiff, 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 interests between the defendants and a judgment defin- "ing the real rights and obligations of the defendants *inter se*. "Without necessity, a judgment will not be *res judicata* amongst "defendants, nor will it be *res judicata* amongst them by mere "inference from the fact that they have been collectively defeated "in resisting a claim to a share made against them as a group" (p. 220). The rule so laid down was accepted by this Court in a recent case—*Ahmad Ali* v. *Najabat Khan* (2) and by the Madras Court in the case *Madhavi* v. *Kelu* (3).

It has been contended that that rule applies in the present case. It is said that in the former suit there was a conflict of interests between Chajju and his co-defendants, and that it was necessary for the adjudication of the plaintiffs' rights to adjudicate upon the rights and interests of the defendants *inter se*. Now it must be borne in mind that Ganga and Jamna were added as defendants in consequence of the first plea raised by Chajju himself to the effect that they were the real heirs of Sheo Singh, and not the plaintiffs. It was therefore common ground with all the defendants that if the property in suit belonged to Sheo Singh, Ganga and Jamna, and not the plaintiffs were entitled to it. The plaintiffs were admittedly out of possession, and the defendants who challenged their title were entitled to remain quiet and put them to proof of that title. It is true that the Munsif found, not only that the plaintiffs had proved their title to the property, but also that Chajju had merely been in permissive possession or occupation. The former finding was a complex finding amounting to a finding that the plaintiffs were heirs of Sheo Singh and

(1) (1886) I. L. R., 11 Bom., 216. (2) (1895) I. L. R., 18 All., 65.
(3) (1892) I. L. R., 15 Mad., 264.

that the property belonged to Sheo Singh, and no doubt it involved the further finding that the claim set up by Chajju that the property was his ancestral property failed, but the finding as to Chajju having been in permissive possession or occupation was only necessary when the further question, namely, whether Chajju, as alleged by him, had been in adverse possession for upwards of 12 years had to be considered. That question in a sense was only material when the plaintiffs' title to the property had been ascertained, inasmuch as an answer in the affirmative to the question would have afforded a complete defence to the plaintiff's suit. Now the moment it appeared that the plaintiffs, and not Ganga and Jamna, were the heirs of Sheo Singh, and it was necessary to go into Chajju's defence, Ganga and Jamna were no longer interested in the adjudication of the issue whether the property was Sheo Singh's or Chajju's, or whether the latter had or had not been in adverse possession for upwards of 12 years. The Munsif having come to the conclusion that Ganga and Jamna had no interest in the property in suit, I am unable to see how it was necessary to adjudicate upon the rights and interests of the defendants *inter se*. I would therefore hold that the decree of the Munsif is no bar to Chajju, the defendant in the present case, pleading and being allowed to prove, that the property in suit is his ancestral property, and has been in his possession for upwards of 12 years adversely to the plaintiffs-respondents.

Apart from these considerations, it has also been contended that the decree of the Munsif of the 24th November 1877, in the former suit no longer exists, and doubtless as between the plaintiffs in that suit and the plaintiffs in the present suit it certainly does not exist, as the former and the predecessor in title of the latter were all parties to the decree which set it aside.

Chajju did not appeal, but the appeal preferred by his co-defendants was based upon a ground common to all the defendants, namely, that assuming the property in suit to have been Sheo Singh's, the plaintiffs were not entitled to succeed. The appeal prevailed upon that ground, and had Chajju joined in, or been made a party to, the appeal, it is impossible to conceive that the finding of the appellate Court could have been otherwise than it was. The appellate Court finding that the plaintiffs had

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failed upon a ground common, not only to the defendants who appealed, but also to the other defendant who had not appealed, set aside the decree of the Munsif entirely and dismissed the suit. It has been urged that, having regard to the terms of section 544 of the Code of Civil Procedure, the Court ought not to have dismissed the suit. That section applies where the decree against several defendants proceeds on any ground common to all the defendants and only some of such defendants appeal. It does not, unless the decree itself proceeds on a ground common to all the defendants, enable an appellate Court to decide upon a ground which it considers to be common to all the defendants, an appeal preferred by some only of such defendants, and to reverse the decree of the Court below in favour of all the defendants—see *Puran Mal* v. *Krant Singh* (1). We must see, therefore, whether the decree of the Munsif proceeded upon a ground common to all the defendants. That decree in so far as it proceeded upon the ground that the plaintiffs in the former suit were entitled to the property of Sheo Singh, proceeded upon a ground common to all the defendants, because it was the case of all the defendants that if the property was Sheo Singh's the plaintiffs were not entitled to succeed. But it is said that the decree necessarily proceeded also upon the further ground, namely, that the property was Sheo Singh's, and not Chajju's as claimed by him. That seems to be so, and that ground is one which certainly was not common to both sets of defendants, and I am therefore inclined to think that section 544 of the Code of Civil Procedure was not applicable to the case, though, having regard to the first plea of Chajju in the lower Court, it is not easy to see how the appellate Court, when it found that the plaintiffs were not the heirs of Sheo Singh, could logically do otherwise than dismiss the suit. The point is not free from difficulty, but it is not necessary for the purposes of this judgment that I should decide the point, as I have already come to the conclusion that even if the decree of the 24th November 1877 be treated as subsisting *quoad* the defendant Chajju, it cannot be put forward as a bar to the defence pleaded by him.

(1) (1897) I. L. R., 20 All., 8.

In dealing with the question of *res adjudicata* the lower Courts, as I have already shown, have treated the decree of the 24th November, 1877, as *res adjudicata*, not only as to the property in suit being Sheo Singh's, but as to the possession of the defendant Chajju being permissive, and they have not allowed the question of adverse possession to be gone into. They have held that that decree shows that the possession of Chajju was permissive, and inasmuch as they considered nothing had been proved to show that that possession had since become adverse, they held that this suit was not barred by limitation.

Both Courts seem to have lost sight of the fact that in the former suit in 1877 Chajju in his written statement distinctly put forward an adverse claim to the property now in suit, claiming it as his ancestral property, and that Ganga and Jamna in their written statement stated that owing to an adverse claim made by Chajju they had been about to bring a suit against him for possession when the former suit was instituted. Both of these written statements have been put in evidence in the present case, and in the face of them it would be hard to say that Chajju's possession, if it has continued since 1877, was not adverse to Ganga and Jamna and to those who now claim through them.

Under these circumstances I would set aside the decree appealed against and remand the case to the first Court to try the case generally on its merits.

BURKITT, J.—I concur. The appeal is allowed and the record is remanded under section 562 of the Code of Civil Procedure through the lower appellate Court to the Court of first instance to be placed on the file of pending suits and decided according to law. The costs of the two lower Courts and of the appeal in this Court will abide the event.

Appeal decreed and cause remanded.