

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.

ASHRAF-UN-NISSA (DEFENDANT) v. ALI AHMAD (PLAINTIFF).*

Civil Procedure Code, section 13—Res judicata—Decision of a Rent Court on a question of title.

1904
May 5.

Held that when an Assistant Collector hears a suit for profits, or for rent, or any other suit which under the Rent Act he is competent to hear, although it may be necessary for him for the purposes of that suit to decide every question, whether of title or otherwise, which may be raised before him, his decision of such question cannot operate as *res judicata* in respect of any suit which may afterwards be brought in a Civil Court in which the proprietary title to the land out of which such profits or rents may arise is in issue.

IN the suit out of which this appeal arose the plaintiff claimed possession of a certain share in various villages specified in the plaint. The claim was decreed by the Court of first instance, except as to one village. In respect of that village the Court held the plaintiff's claim to be barred by the doctrine of *res judicata*. It appears that the plaintiff had on a former occasion brought a suit for profits in a Court of Revenue against one of the present defendants. In that suit the defendant contended that the plaintiff was not a shareholder, but was only entitled to get, along with others, Rs. 100. The Court of Revenue decided the question of proprietary title thus raised against the plaintiff. It held that the plaintiff was, along with others, entitled to only Rs. 100, and, as it was not shown what portion of the Rs. 100 the plaintiff was entitled to receive, it dismissed the plaintiff's suit. There were cross appeals, the defendants appealing against the allowing of the main portion of the plaintiff's claim, whilst the plaintiff appealed against the dismissal of a portion of it. The lower appellate Court (District Judge of Shahjahanpur) dismissed the defendants' appeal, but decreed that of the plaintiff, holding that the decision of the Revenue Court did not amount to *res judicata*. The present appeal was preferred to the High Court by one of the defendants against the decree of the District Judge allowing the plaintiff's claim in full.

* Second Appeal No. 936 of 1902, from a decree of C. D. Steel, Esq., District Judge of Shahjahanpur, dated the 25th of August 1902, modifying a decree of Babu Nihala Chandra, Subordinate Judge of Shahjahanpur, dated the 3rd of March 1902.

1904

ASHRAF-UN-
NISSAF.
ALI AHMAD.

Munshi *Gokul Prasad* (for whom *Babu Sital Prasad Ghosh*)
and Dr. *Satish Chandra Banerji*, for the appellant.

Mr. *Abdul Raof*, for the respondent.

STANLEY, C. J., and BURKITT, J.—The learned vakil, who appears for the defendant appellant in this case, informs us that the case turns on one simple point of law. He puts that point of law in this way :—“Has the decision passed by an Assistant Collector in a suit for profits the force of *res judicata* in a subsequent suit in a Civil Court in respect of the land the profits of which had been in dispute before the Assistant Collector?” The learned vakil was not able to show any authority in support of an answer in the affirmative to that proposition, and we think rightly so. When an Assistant Collector hears a suit for profits, or for rent, or any suit which under the Rent Act he is competent to hear, it is necessary for him for the purpose of that suit to decide every question, whether of title or otherwise, which may be raised before him. But those questions he decides only incidentally and for the purpose of arriving at a correct decision on the matter in dispute between the parties litigating before him. We cannot allow such a decision, however carefully and conscientiously arrived at by an Assistant Collector in such a case, to be treated as a *res judicata* in a subsequent suit in which the proprietary title to the land the profits of which were in dispute before him is in question. Such a suit being one for title can be instituted only before a Civil Court, and to show that in such a suit the decision of an Assistant Collector cannot be *res judicata* it is sufficient to refer to the words of section 13 of the Code of Civil Procedure. That section provides that before any decision can be a matter of *res judicata* it must have been passed in a Court of competent jurisdiction competent to try the subsequent suit in which such issue has been subsequently raised. Here it is not pretended that the Assistant Collector had jurisdiction to try the civil suit we are now considering. Such being the case, we are without hesitation of opinion that the decision passed by the Assistant Collector in the previous suit for profits can in no way be considered to be *res judicata* in this suit. For these reasons we dismiss this appeal with costs.

Appeal dismissed.