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the law of contract in England and as codified in India, is possibly the explanation or the foundation of the consistent rule which has been laid down by this Court. The appeal must be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Ashworth and Mr. Justice Iqbal Ahmad.

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AMAR SINGH AND ANOTHER (DEFENDANTS) *v.* GOBIND RAM AND ANOTHER (PLAINTIFFS) AND SUNDAR LAL (DEFENDANT).*

Act (Local) No. II of 1901 *(Agra Tenancy Act), section* 199 (3)—*Act (Local) No. III of* 1901 *(Land Revenue Act), section* 111, *clause* (1)—Res judicata—*Decree of revenue court—Conflicting decisions—Later prevails.*

A decision of a revenue court, under section 199(3) of the Agra Tenancy Act, operates as a decision by a civil court for the purpose of *res judicata*. *Thakur Hanwant Singh* v. *Jhamola Kunwar* (1) and *Baru Mal* v. *Sunder Lal* (2), followed.

In a case where two decrees operate as *res judicata*, one as against the plaintiff and the other as against the defendant, the later decree must prevail over the former because it shuts out consideration of the former. *Dambar Singh* v. *Munawwar Ali Khan* (3), followed.

THE facts of this case are fully stated in the judgement of the Court.

Babu *Saila Nath Mukerji*, for the appellants.

Munshi *Narain Prasad Ashthana*, for the respondents.

ASHWORTH and IQBAL AHMAD, JJ. :—This second appeal by the defendants arises out of a suit brought by the plaintiffs respondents for a declaration of their

* Second Appeal No. 1860 of 1925, from a decree of Kashi Prasad, Subordinate Judge of Muttra, dated the 5th of October, 1925, reversing a decree of Ram Saran Das, Munsif of Mahaban, dated the 14th of July, 1925.

(1) (1922) 20 A.L.J., 340. (2) (1923) 21 A.L.J., 330.
(3) (1915) I.L.R., 37 All., 531.

proprietary title in respect of 9·33 acres of land out of 50 acres in a certain *khata*. The plaintiffs based their title on the fact that previous to the year 1900 they were zamindars and had a share in two other *khatas* and also a corresponding share in this particular *khata*, which was a *shamlat khata*. They admitted that the defendants had purchased a fraction of their rights in the other *khatas*, but maintained that at the auction-sale there was no mention of a purchase of land or share in the *shamlat khata*. They also maintained that the defendants in 1914 had sued them as the lambardars for a share of profits in the *shamlat khata* in dispute and that in that case the revenue court had decided against the defendants and that this decision of the revenue court operated as *res judicata* in the present case. A third reason for their claim being allowed was that they had been in adverse possession of the land in suit for twelve years as against the defendants, if the latter could be held to have acquired any title by the auction-sale of 1900.

The trial court, namely the Munsif of Mahaban, decided (1) that the defendants had acquired a title in the *shamlat patti* by reason of their purchase of an interest in the principal *khatas;* and (2) that the plaintiffs could not be held to have been in adverse possession of the land in suit, because they were lambardars and because they were co-sharers still to some extent in the principal *khatas* even after the auction-sale; and then he proceeded to consider a plea of the defendants that by reason of an order passed in December, 1924, the question of title in the land was *res judicata* against the plaintiffs, and decided that this order of the partition court could not be regarded as *res judicata* as against the plaintiffs. In view, however, of the first two findings he dismissed the plaintiffs' suit. On appeal the Subordinate Judge

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of Muttra came to no decision on the question whether the defendants acquired an interest in the *shamlat khata* by reason of the auction-sale in 1900. He held that the revenue court decree under section 164 operated as *res judicata* in favour of the plaintiffs. He agreed with the trial court that the order of the partition court, dated the 9th of December, 1924, did not operate as *res judicata* as against the plaintiffs. Lastly, he held that the plaintiffs had made out their plea of adverse possession for more than twelve years.

The decree of the revenue court in the case by the defendants against the plaintiffs for their share of profits under section 164 does operate as negativing the title of the defendants in the *khata* in dispute. We find that the revenue court purported to determine the question of title on the ground that the defendants were not recorded as co-sharers. In other words, it decided the question of title under clause (3) of section 199 of the Agra Tenancy Act. Now it is immaterial whether that court was right in holding that the fact of the present defendants being recorded as co-sharers in the principal pattis amounted to their being recorded as co-sharers for the purpose of land in the *shamlat patti* or not. The court was entitled to interpret the village papers and to take the view that the defendants were not recorded co-sharers. In pursuance of this view, it was entitled to determine the question of title under section 199 (3) of the Agra Tenancy Act. No appeal was filed against its decision. Consequently, that decision is final. The question is whether it can operate as *res judicata* in this case. It has been consistently held by this Court that a decision of a revenue court under section 199 (3) of the Agra Tenancy Act operates as a decision by a civil court for the purpose of *res judicata*. The present suit is within the jurisdiction of a Munsif, namely, the

civil court of the lowest jurisdiction. If the revenue court is for the purposes of *res judicata* to be treated as a civil court, it must be deemed to have decided the matter as a Munsif at least. It must, therefore, be held to have been competent to decide the present suit. As an authority for this we need only mention the cases of *Thakur Hanwant Singh* v. *Jhamola Kunwar* (1) and *Baru Mal* v. *Sunder Lal* (2).

As regards the order of the partition court we are unable to agree with the lower courts that this order does not operate as *res judicata* in favour of the defendants. This order was as follows :—

"The sale-deed shows that *shamlat* was also sold. The applicant should seek his remedy from civil court. Objection is rejected."

The partition court after passing this order proceeded to prepare the lots and to submit the partition proceeding referred to in section 114 of the revenue court to the Collector. It could not have done this, if the order quoted above was intended by the court to be a reference of the parties to the civil court under section 111 (1) (*b*) of the Land Revenue Act. The order clearly states that the *shamlat* was also sold and this clearly amounts to a declaration of the title of the auction-purchaser in the *shamlat* land. The decision, therefore, contained in the order quoted amounts to a decision under section 111 (1) (*c*). It, therefore, had the effect of a decree of a civil court in virtue of section 112 of the revenue court. The reference in the order to a remedy in the civil court must mean by way of appeal. There was no appeal against this decision and it has become final. It, therefore, operates as *res judicata* against the plaintiffs in the same way as the decree in the 164 case operated against the defendants.

(1) (1922) 20 A.L.J., 340. (2) (1923) 21 A.L.J., 330.

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The situation is, therefore, that we have two decrees operating as *res judicata;* one as against the plaintiffs and one as against the defendants. We are of the opinion that in such a case it is the later decree that must prevail over the former, because the later decree shuts out consideration of the former. As an authority for this we would mention the case of *Dambar Singh* v. *Munawwar Ali Khan* (1). We, therefore, consider that the lower appellate court was wrong in deciding the present case in favour of the plaintiffs on the ground of *res judicata.*

As regards the plea of adverse possession set up by the plaintiffs the lower appellate court has allowed the plea on the ground that the plaintiffs have been receiving rent in respect of the *shamlat patti* for more than twelve years. No receipt, however, of the rent could operate as adverse possession for the reasons set forth by the trial court. The plaintiffs were both lambardars and as such, agents for the other co-sharers. They were also themselves co-sharers in the principal *pattis* and any possession of them of the *shamlat pattis* would be possession not only on behalf of themselves but on behalf of the other co-sharers in the principal *pattis.* In view of the above findings it is not necessary for us to decide whether the auction-sale in 1900 did operate to vest in the defendants an interest in the *shamlat patti.* We are, however, of opinion that it did so. The interest of the co-sharers in the *shamlat patti* was merely appurtenant to their respective interests in the principal *pattis* and as such would pass along with the interest of the plaintiffs in those *pattis* transferred to the defendants by the auction-sale, irrespective of any specific mention in the sale-deed of the sale of the appurtenant interest.

(1) (1915) I.L.R., 37 All., 531.

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For the above reasons we allow this appeal and restore the decree of the trial court. The appellants will get their costs throughout.

Appeal allowed.

MISCELLANEOUS CIVIL.

Before Justice Sir Cecil Walsh and Mr. Justice Banerji.

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IN THE MATTER OF THE FIRM NIHAL CHAND, KISHORI LAL.*

Act No. XI of 1922 (Indian Income-Tax Act), sections 3 and 26—Effect as regards assessment of income-tax of the conversion of a joint Hindu family carrying on business as such into a registered firm.

A body of persons constituting a joint Hindu family who had for some years been carrying on business as such in Cawnpore converted themselves into a registered firm, with specified shares of each individual partner.

Held, that for the purposes of the Indian Income-Tax Act, 1922, the registered firm was the "successor" of the joint Hindu family, and that as regards the first assessment after the conversion it was the firm that was liable to pay; but the principles on which the rate and the amount of the tax payable should be calculated were those applicable to the joint Hindu family who had been carrying on the business during the period on the profits of which the assessment was to be based. *In the matter of Begg, Sutherland & Co., Ltd.* (1), followed.

THIS was a reference under section 66 (2) of the Indian Income-Tax Act, 1922.

The facts of the case sufficiently appear from the order of the Court.

The Government Advocate (Mr. *G. W. Dillon*), for the Crown.

Dr. *Kailas Nath Katju*, for the assessee.

WALSH and BANERJI, JJ. :—This is a case stated by the Commissioner of Income-Tax. Shortly stated

* Miscellaneous Case No. 62 of 1927.
(1) (1925) I.L.R., 47 All., 715.