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has been given by sub-section (4) of section 96B of the Government of India Act. That sub-section confirms "all rules or other provisions in operation at the time of the passing of the Government of India Act, 1919, whether made by the Secretary of State in Council or by any other authority relating to the Civil service of the Crown in India." But it is certainly open to question whether this expression is sufficiently wide to cover rules regulating the General Provident Fund. I am decidedly of opinion that it is not, but it is not necessary for me to decide the point here because, as I have already said, the rule itself does not appear to me expressly to authorize the attachment of these compulsory deposits or to revoke any statutory provision relating to them.

I consider, therefore, I am justified in following the authority of the cases of *Devi Prasad* v. *Secretary of State for India in Council* (1) and *Jagannath* v. *Tara Prasanna* (2) and holding that the deposit in question is not liable to attachment. I therefore allow the application with costs and set aside the order of the court below directing the deposits to be attached.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice King.

March, 18.

EJAZ AHMAD AND OTHERS (DEFENDANTS) *v.* SAGHIR BANO AND OTHERS (PLAINTIFFS) AND AKBARI BEGAM AND OTHERS (DEFENDANTS).*

Civil Procedure Code, section 11—*Partition suit*—Res judicata *as between co-defendants—Conflict of interest* inter se *unnecessary.*

In a partition suit, if, for the purpose of giving relief to the plaintiff, a question has to be decided as between the different parties whether they are arrayed as plaintiffs or defendants,

* Second Appeal No. 1243 of 1926, from a decree of P. C. Plowden, District Judge of Bareilly, dated the 29th of April, 1926, confirming a decree of Lakshmi Narain Misra, Munsif of Havali, dated the 21st of September, 1925.

(1) (1923) I. L. R., 45 All., 554. (2) (1923) I. L. R., 3 Pat., 74.

the decision is binding on all the parties, so as to be *res judicata* as between any co-defendants although there was no conflict of interest in the suit as between those defendants. *Parsotam Rao Tantia* v. *Radha Bai* (1), followed. *Nalini Kanta Lahiri* v. *Sarnamoyi Debya* (2), referred to. *Muhammad Ahmad* v. *Zahur Ahmad* (3) and *Gangaram Balkrishna* v. *Vasudeo Dattatraya* (4), distinguished.

Mr. *Syed Mohammad Husain*, for the appellants.

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

BANERJI and KING, JJ. :—The four appellants were defendants in a suit for partition. The property in which the plaintiffs claim a share belonged to one Hafiz Niaz Ahmad. He left behind several heirs and the plaintiffs claim specified shares against the other heirs of Niaz Ahmad. The defence of the appellants and the other defendants was that the house in question was given to Musammat Wilaiti Begam by Hafiz Niaz Ahmad in lieu of her dower debt and the plaintiffs have no right to the house, and in no case can they have their share apportioned without payment of the proportionate share of the debt. The defendants averred that Musammat Wilaiti Begam's dower was Rs. 40,000, but the plaintiffs say that it was Rs. 1,000.

In the year 1910 one of the heirs of Niaz Ahmad transferred his share and the transferee instituted a suit for partition of that share. In that case some heirs supported the claim of the transferee but the present plaintiffs and the appellants pleaded that Musammat Wilaiti Begam's dower was Rs. 40,000 and that she was in sole possession of her husband's assets in lieu of dower debt. The issue then raised was whether Wilaiti Begam's dower was settled at Rs. 40,000, whether the dower was still due to her, and whether she was in sole possession of her husband's assets in lieu of the dower debt.

(1) (1910) I. L. R., 32 All., 469. (2) (1914) 19 C. W. N., 531.
(3) (1922) I. L. R., 44 All., 334. (4) (1922) I. L. R., 47 Bom., 534

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In the present case the same issue arises and the question that we have to decide in this appeal is whether the judgement and the decree that followed the 1910 suit bind the parties with regard to the issue just set out by us.

The courts below have held that the finding in the previous litigation was binding, although the plaintiffs and the appellants were co-defendants in the case.

It is unnecessary to go into the reasons given by the learned District Judge in appeal, but in our opinion the question is concluded by what was held in the case of *Parsotam Rao Tantia* v. *Radha Bai* (1). The decree passed in a partition suit, in which for the purpose of giving relief to the plaintiff, if a question has to be decided as between the different parties whether they are arrayed as plaintiff or defendant, must in our opinion be binding on all the parties. No doubt in an ordinary case a finding on an issue as between co-defendants is not binding unless it is necessary to give relief to the plaintiff and if there is a conflict between the defendants, but the decree in a partition suit stands on a different footing. In the case of *Parsotam Rao Tantia* v. *Radha Bai* it was distinctly pointed out that there was no conflict in interest between the two defendants who had in the previous suit resisted the claim of the plaintiffs. In the present case no doubt there was no conflict between the appellants and the plaintiffs, but for the purpose of giving relief to the plaintiffs it was absolutely necessary to decide the issue regarding the dower of Wilaiti Begam and regarding the question of the possession of the assets of her husband. The principle of that case has been recognized in various other cases and reference may be made to the judgement of their Lordships of the Privy Council in the case of *Nalini Kanta Lahiri* v. *Sarnamoyi Debya* (2), where it was held that in a partition suit where the in-

(1) (1910) I. L. R., 32 All., 469. (2) (1914) 19 C. W. N., 531.

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terests of different parties had to be ascertained, the decree passed in the case cannot be ignored by a party afterwards in a suit that he may institute in spite of the previous ascertainment of shares.

The learned advocate for the appellant has strenuously contended before us that the case of *Muhammad Ahmad* v. *Zahur Ahmad* (1), and the case of *Gangaram Balkrishna* v. *Vasudeo Dattatraya* (2), lay down that there can be no *res judicata* where there was no conflict between the defendants *inter se*. On an examination of the two cases it is clear that there the issue in the second case was not identical with the issue that had to be decided in the previous case to give relief to the plaintiff. We are therefore of opinion that there is no force in this appeal and we dismiss it with costs.

FULL BENCH.

Before Mr. Justice Sulaiman, Mr. Justice Mukerji and Mr. Justice Banerji.

SAHDEO (PLAINTIFF) *v.* BUDHAI AND OTHERS (DEFENDANTS).* 1929 *April*, 5.

Act (Local) No. III of 1926 *(Agra Tenancy Act), sections* 99, 121 *and* 230—*Suit between co-tenants for declaration and joint possession—Jurisdiction—Civil and Revenue courts.*

A suit for a declaration that the plaintiff, jointly with the defendants, is a co-tenant of a certain holding, and for joint possession thereof, is cognizable by the revenue court and not by the civil court.

So far as the suit is one for the declaration claimed, it falls within section 121 of the Agra Tenancy Act, 1926, inasmuch as the defendants, who are admittedly tenants, are persons claiming to hold through the landholder. Regarding the relief for possession the suit falls within the scope of section 99, for the same reason. It is not necessary, for the

* Miscellaneous Case No. 1112 of 1928.

(1) (1922) I. L. R., 44 All., 934. (2) (1922) I. L. R., 47 Bom., 534.