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shall each have an equal right to the *stridhan* of their mother.

In any case the production of this single text from the "Bhadrabahu Samhita" will not suffice to establish the plaintiff's claim even if its meaning is as is contended by her learned counsel. It is an established principle that the ordinary rules of Hindu law shall apply to the Jain community in the absence of a special custom or usage varying the Hindu law; and the onus of proving such custom or usage lies heavily upon the plaintiff. There is abundant authority for this proposition, but we will content ourselves by referring to a case decided by their Lordships of the Privy Council, *Chotay Lall* v. *Chunnoo Lall* (1), in which their Lordships laid down in clear terms that in the absence of proof of special custom varying the ordinary Hindu law of inheritance, that law is to be applied to Jains. It is a matter of admission that in the case before us the plaintiff has been unable to prove a single instance in which the custom alleged by her has been recognized in any court of law. It is also conceded before us by learned counsel for the plaintiff appellant that if the ordinary Hindu law be held applicable, then the plaintiff's suit must fail.

For the reasons given above we are of opinion that the view taken by the courts below is correct. This appeal, therefore, fails and is dismissed with costs.

Before Mr. Justice Harries and Mr. Justice Rachhpal Singh

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October, 28

KALYAN DAS (PLAINTIFF) *v.* KASHI PRASAD AND OTHERS (DEFENDANTS)*

Res judicata—*General principle of* res judicata—*Decision of an issue in a suit is binding at subsequent stages of same suit —Civil Procedure Code, section* 11; *order XIV, rule* 2.

The decision of an issue in a suit is binding between the parties at subsequent stages of that suit; its binding force depends not upon section 11 of the Civil Procedure Code, which

*First Appeal No. 230 of 1934, from an order of Raghunath Prasad Trivedi, Civil Judge of Agra, dated the 27th of October, 1934.

(1) (1878) I.L.R. 4 Cal. 744.

in terms is not applicable, but upon the general principle of *res judicata*. Once the court has delivered its judgment upon an issue, e.g. a preliminary issue of law tried by it first, and has signed that judgment, then, apart from any question of a review of judgment under the law, as far as the trial court is concerned that issue can not be re-agitated at a subsequent stage of the suit. As order XIV, rule 2 of the Civil Procedure Code provides for the decision of a single issue apart from the trial of the other issues, it must be implied that as far as the trial court is concerned that issue is decided once and for all.

Messrs. *K. D. Malaviya* and *G. S. Pathak*, for the appellant.

Dr. *S. N. Sen* and Mr. *B. Malik*, for the respondents.

HARRIES and RACHHPAL SINGH, JJ.:—This is a plaintiff's first appeal from an order returning a plaint for presentation to the proper court. The learned Judge who passed the order, viz., Mr. Raghunath Prasad Trivedi, Civil Judge of Agra, held that he had no jurisdiction to entertain the suit and passed the order now under appeal. However, he proceeded to determine the other issues of fact in case his decision was appealed against.

It is against these findings that an objection under order XLI, rule 22 of the Code of Civil Procedure has been filed by the defendants respondents.

The suit out of which the appeal arises was brought by the plaintiff to recover possession of a certain piece of land. In the plaint it was alleged that the defendants had formerly been tenants of this piece of land but that they ultimately repudiated the plaintiff's title. It was pleaded that a notice had been served upon the defendants claiming possession of the land and accordingly it was said that the defendants were nothing more than trespassers. The plaintiff valued the suit at Rs.5,100. They treated the suit as a title suit which has to be valued for the purposes of court fee and jurisdiction at the value of the land in dispute. Having valued the suit at

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Rs.5,100 it was, according to the plaintiff, a suit cognizable only by the learned Civil Judge.

The defendants in the suit raised a question of jurisdiction and contended that the suit was not cognizable by the learned Civil Judge but was a suit which should have been brought in the court of the Munsif. On behalf of the defendants it was said that the plaintiff had deliberately overvalued his suit in order to bring it within the jurisdiction of the court of the learned Civil Judge. According to the defendants this was really a suit to recover possession of property from a tenant holding over and therefore the suit should have been valued for the purposes of court fee and jurisdiction at one year's rental of the property. If the defendants' contention be correct there can be no doubt that this was a suit cognizable by the learned Munsif and not a suit which should have been brought in the court of the learned Civil Judge.

When the case came before the learned Civil Judge he at once realised that there was a question of jurisdiction in the case which would have to be determined and it must have been obvious to him that a decision upon the question of jurisdiction might put an end to the case as far as his court was concerned. At that time the learned Civil Judge was Mr. Nomani and he ordered that this issue on the question of jurisdiction be decided separately. This order was passed on the 20th of July, 1933, and on the 31st of July, 1933, after the parties had been given an opportunity to put forward their contentions the learned Judge passed an order deciding this issue of jurisdiction. Mr. Nomani held that the suit was a suit brought on the basis of title and that it had been properly valued at Rs.5,100 and consequently the court of the learned Civil Judge of Agra had jurisdiction to hear and determine the same.

After this order had been passed Mr. Nomani was transferred and Mr. Raghunath Prasad Trivedi was appointed Civil Judge in his stead. The case eventually

came before Mr. Raghunath Prasad Trivedi and on the 27th of October, 1934, he passed the order now under appeal.

In that order he held that the suit was not a title suit and was a suit which should have been valued for court fee and jurisdiction at one year's rent. That being so, he came to the conclusion that it was a suit which should have been filed in the court of the learned Munsif and he accordingly returned the plaint for presentation to the proper court. Mr. Raghunath Prasad Trivedi's order is a comparatively lengthy one. He deals at considerable length with this question of jurisdiction but nowhere does he mention the previous order passed by his predecessor Mr. Nomani deciding the issue in favour of the plaintiff. Mr. Raghunath Prasad Trivedi proceeded to decide the whole case as if Mr. Nomani had never passed any order upon this issue of jurisdiction. We have very little doubt that this question of jurisdiction was argued before him but for some reason he decided the question entirely afresh without paying any regard whatsoever to what his predecessor had done.

It has been argued strenuously on behalf of the plaintiff appellant that it was not open to Mr. Raghunath Prasad Trivedi to consider this question of jurisdiction because that question had been once and for all decided by Mr. Nomani and could not therefore be re-agitated at any later stage before the trial court. On the other hand it has been argued on behalf of the defendants that this question of jurisdiction had never been finally decided as far as the trial court was concerned and accordingly it was quite open to Mr. Raghunath Prasad Trivedi to reconsider the matter and to come to a conclusion contrary to that of his predecessor.

In our judgment it was not open to Mr. Raghunath Prasad Trivedi to consider this question of jurisdiction because in our view the matter as far as the trial court was concerned was finally decided by Mr. Nomani. It

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must be remembered that the Code of Civil Procedure expressly provides for the decision of some particular issue if such decision may dispose of the whole case. Order XIV, rule 2 of the Code of Civil Procedure is in these terms: "Where issues both of law and fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined." In short, this rule provides that a case may in certain circumstances be decided piecemeal. The learned trial Judge may first decide one issue and if the decision of that issue does not finally dispose of the case he may then go on to decide the other issues in the case. As the Code provides for the decision of a single issue, it must, in our view, be implied that as far as the trial court is concerned that issue is decided once and for all. If a court having decided a preliminary issue is entitled to reconsider its decision it might go on altering and altering its decision any number of times at the invitation of the parties. In our judgment once the court has delivered its judgment upon that issue and has signed its judgment, then as far as the trial court is concerned that issue cannot be re-agitated If the trial court was permitted at a later stage to reconsider findings recorded on issues decided earlier there would really be no end to litigation. There must be some finality to decisions and in our view, having regard to the provisions of the Code which expressly permit the decision of preliminary points and issues, we must hold that once such issues have been decided they have been decided once and for all as far as the trial court is concerned and that such cannot be reconsidered by that court.

There appears to be no case of this Court or indeed of any Court precisely in point, but in our view the present case is governed by the principles which have

been laid down by the Privy Council in two comparatively recent cases. In the case of *Hook* v. *Administrator-General of Bengal* (1) their Lordships held that when a question at issue between the parties to a suit is heard and finally decided, the judgment given on it is binding on the parties at all subsequent stages of the suit. Its binding force depends not upon section 11 of the Code of Civil Procedure, but upon general principles of law; if it were not binding there would be no end to litigation. That case raised questions as to the construction of a will. The matter eventually came before CHAUDHURI, J., on the original side of the Calcutta High Court. He decided a number of questions in the case but he made it clear that he was not disposing finally of the whole matter. The concluding words of the decree which was drawn up by the court are as follows: "And this Court does not think fit at present to determine the destination of the income of the said Residuary Trust Funds or of the corpus thereof or the rights of parties therein and thereto respectively after the death of the said Eliza Humphreys and does defer the determination of the said questions until after the death of the said Eliza Humphreys." After the death of Miss Eliza Humphreys the proceedings were revived and continued and the previous decision of CHAUDHURI, J., on some of the points was challenged. It is clear that the case had never been finally decided and it was argued that as such was the case there was no finality about the decisions already given by CHAUDHURI, J., and that it was open to the court to reconsider the matter and to come to a contrary conclusion. Eventually their Lordships of the Privy Council held that though the case had not been finally decided yet the decisions already given by CHAUDHURI, J., in the suit bound the parties in any subsequent proceedings in that suit. Their Lordships point out that section 11 of the Code of Civil Procedure can have no application to the case because that section contemplates two suits,

(1) (1921) I.L.R. 48 Cal. 499.

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but in spite of that they held that upon general principles the parties to the suit were bound by decisions given in the suit on various issues and that such could not be re-agitated in that same suit.

The case of *Hook* v. *Administrator-General of Bengal* (1) was considered and the principles enunciated therein were affirmed by their Lordships of the Privy Council in the case of *Maharajadhiraj Rameshwar Singh* v. *Hitendra Singh* (2). In that case during the progress of a suit a receiver had been appointed by consent of the parties. One of the parties resiled and attempted to obtain a discharge of the receiver and failed. At a later stage another attempt was made to obtain a discharge of the receiver. Their Lordships held that the decision previously given, though not given in a former suit, was binding between the parties and operated by way of *res judicata*.

In our judgment no valid distinction can be made between these two cases and the present case. There has, in the case before us, been a decision given by a competent Judge on a matter in issue. He was entitled by the provisions of the Code to decide that issue at the time he did and in our judgment his decision is binding between the parties in all subsequent proceedings before the court of first instance. The proper stage to challenge Mr. Nomani's decision upon this question of jurisdiction will be when the decree of the court below is under appeal and then it will be open to the parties to challenge the issue of jurisdiction as well as the decision upon all other issues in the case. In our judgment Mr. Raghunath Prasad Trivedi had no right to reconsider the decision given by Mr. Nomani and that decision as far as the court of first instance is concerned binds the parties.

It has been argued on behalf of the respondents by Dr. *Sen* that Mr. Raghunath Prasad Trivedi's order is in the nature of an order reviewing Mr. Nomani's judgment, but quite clearly no application was made to him

(1) (1921) I.L.R. 48 Cal. 499. (2) (1924) 22 A.L.J. 968.

to review Mr. Nomani's judgment and he does not purport to do so. Mr. Raghunath Prasad Trivedi was of opinion that the matter was entirely at large and that he could decide the question of jurisdiction afresh apart from anything that had happened in the case.

We wish to make it clear that we do not express any opinion whatsoever upon the merits of the decision upon this question of jurisdiction. We have purposely refrained from hearing argument upon that question. All we decide is that it was not open in the circumstances of this case to Mr. Raghunath Prasad Trivedi to decide the question of jurisdiction at all. That matter having been decided by Mr. Nomani the case had to proceed. Whether the decision of Mr. Nomani is right or wrong is a matter which will have to be considered later in the event of an appeal against the decree.

For the reasons which we have given we hold that the court below was wrong in returning the plaint and should have proceeded to hear and determine the case. We therefore allow this appeal, set aside the order of the court below and remand the case to the court of the learned Civil Judge at Agra to be heard and determined according to law. The costs of this appeal will abide the event.

The objections filed by the defendants respondents refer to certain findings of the learned Judge upon other issues. These findings cannot be considered by us at this stage because all we can do is to set aside the order returning the plaint and to direct the lower court to hear and determine the case. These objections are therefore premature and we do not think it necessary to pass any order on them.