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was not properly considered. We allow the cross-objection and direct that the whole matter be dealt with afresh by the learned Subordinate Judge.

The appellants are entitled to their costs in this Court. The costs incurred in the Court below will abide the result.

KULWANT SAHAY, J.—I agree.

Appeal allowed.
Case remanded.

S. A. K.

APPELLATE CIVIL.

Before Dawson Miller, C.J. and Adami, J.

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Dec., 9.

DIRGOPAL RAI

v.

MAHARAJA BAHADUR KESHO PRASAD SINGH.*

Jurisdiction, territorial, objection as to, not raised in any Court—decree made in the suit, whether can be challenged in a subsequent suit between the same parties—objection, whether can be entertained—Code of Civil Procedure, 1908, *(Act V of* 1908), *sections* 18 *and* 21.

Where in a suit an objection as to the place of suing was not raised in any of the Courts and a decree was passed therein, such a decree is valid and binding, and cannot be called in question in another Court of collateral jurisdiction in a subsequent suit between the same parties on the ground that the Courts in the former suit had no territorial jurisdiction to pass the decree.

Zamindar of Ettiyapuram v. *Chidambaram Chetty* (1), followed.

*Second Appeals nos. 179 and 209 of 1925, from a decision of Maulavi A. Shakur, Officiating Subordinate Judge of Shahabad, dated the 5th February, 1925, reversing a decision of Babu Ram Bilas Sinha, Munsif of Arrah, dated the 11th February, 1924.

(1) (1920) I. L. R. 43 Mad. 675.

Appeal by the plaintiffs.

The suits out of which these two second appeals arose were instituted before the Munsif of Arrah by the former tenants of certain holdings in mauza Suremanpur Harnarayan to recover possession of the holdings from which they were dispossessed.

The village in question was at one time on the north side of the Ganges in the district of Ballia in the United Provinces, but some years ago the river changed its course to the northward and eventually the village found itself on the south side of the river in the Shahabad district in this province. By a Government notification no. 2598 of 1888 the deep stream of the Ganges was declared to be the dividing line between the United Provinces and the province of Bihar and Orissa in that locality. A question arose and was determined in the trial Court whether the Government notification was sufficient to take the locality out of the jurisdiction of the Courts of one province and vest it in that of another without certain formalities by executive officers of the provinces concerned. Both Courts below held in the plaintiffs' favour that mauza Suremanpur Harnarayan was and had for some years been in the district of Shahabad and not in Ballia and any suit relating to the recovery of possession of property situate in that village came within the local jurisdiction of the Shahabad Courts and not those of Ballia. It appeared, however, that in the year 1918, the Maharaja of Dumraon, the proprietor of the village, brought suits against the plaintiffs and others of his tenants to eject them from their holdings on the ground of non-payment of rent. The suits were brought in the appropriate Court at Ballia assuming that that Court had local jurisdiction over the property in question and were decided in favour of the landlord. The tenants appealed but the trial Court's decision was affirmed on appeal and in due course the tenants were dispossessed and the lands were settled by the landlord with other tenants. In those suits

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no objection was taken to the jurisdiction of the Ballia Court by the defendants either in the trial Court or on appeal.

In the present suits the plaintiffs who were some of the defendants in the previous suits sought a declaration that the decrees in the suits brought against them were obtained by fraudulent suppression of notice of process and other illegal means, and further, that the whole proceedings were ultra vires as the Courts in Ballia had no jurisdiction to entertain the suits, the lands being situate outside the local limits of the jurisdiction of those Courts and within the limits of the local jurisdiction of the Shahabad Courts in this province. The plaintiffs also claimed possession of the holdings by ousting the present tenants. The defendants were the Maharaja of Dumraon and the tenants with whom he re-settled the holdings after ejectment of the plaintiffs.

The Munsif at the trial found that there was no fraud in the conduct of the previous suits as alleged. He was of opinion, however, that the decrees obtained by the landlord in the Ballia Courts were ultra vires and void and not binding on the plaintiffs, and that their right to the lands in suit was not affected thereby. He accordingly passed a decree in favour of the plaintiffs for recovery of possession.

The defendants appealed from this decision to the officiating Subordinate Judge who agreed with the Munsif in finding that there was no fraud in the conduct of the previous suits. He also considered that the holdings in question were situate outside the local jurisdiction of the Ballia Courts, but as no objection had been taken in the former proceedings either in the trial Court or on appeal, he considered that the point could not now be taken. He relied also upon section 18 of the Code of Civil Procedure, which he considered applied to the case, and he was of opinion that as no objection had been taken by the present plaintiffs under sub-section (*2*) of section 18

of the Code, they could not afterwards question the jurisdiction. From this decision the plaintiffs appealed to the High Court.

Susil Madhab Mullick and *S. N. Roy*, for the appellants.

L. N. Singh, (with him *N. N. Sinha*, *B. N. Sinha*, *D. C. Verma*, and *Noorul Hosain*), for the respondents.

DAWSON MILLER, C. J. (after stating the facts set out above, proceeded as follows:)—The question for decision is whether the decrees of the appellate Court in Ballia under which the plaintiffs were ejected were valid and binding on the parties. Sections 15 to 25 of the Code of Civil Procedure, deal with the place of suing and so far as the local limits of the jurisdiction of the Court are concerned section 18 provides for cases where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate. In such cases the Court, if satisfied as to the uncertainty, may record a statement to that effect and entertain and dispose of the suit with the same effect as if it had jurisdiction. If no such statement is recorded in the trial Court, and this might well arise if the defendant did not raise the point at the hearing, the section provides in effect that an appellate or revisional Court shall not allow the objection as to jurisdiction if taken before it unless of opinion that there was no reasonable ground for uncertainty and that there has been a consequent failure of justice. This section contemplates the case in which the question of local jurisdiction is raised at an early stage of the proceedings and brought to the notice of the trial Court and, if not, how the appellate Court shall deal with it if raised at that stage. Section 21 further provides that no objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity,

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and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice. In the present case admittedly objection was never taken either in the trial Court or on appeal. It would appear to be the view of the Ballia Courts that they still have jurisdiction to deal with cases of this nature in respect of lands situate in what was once the Ballia district notwithstanding the notification of 1888, and it may be assumed that, at the most, it could have been said on behalf of the present plaintiffs that there was an uncertainty as to the local limits of the jurisdiction of those Courts. Moreover the only ground upon which a failure of justice is alleged is the non-service of process which has been negatived in the judgment under appeal. It would appear, therefore, that the appellate Court in Ballia would not have entertained the objection even if it had been taken before it, and would in such a case have had jurisdiction to pass a decree in spite of the objection. The point ought to have been raised by the present plaintiffs in that suit and they ought not, in my opinion, to be in a better position by reason of their laches in not having raised it and be allowed to say that because they did not raise the point the decree of the appellate Court was without jurisdiction. Had the point been raised there can be no doubt that in the circumstances the appellate Court would have decided it against the present plaintiffs and such decision would have cured any defect that might have existed as to jurisdiction in the first instance. I consider, therefore, that the decrees which it is now sought to question must be regarded as valid and binding and cannot be called in question in another tribunal in collateral proceedings between the same parties. A somewhat similar point arose in the case of the *Zamindar of Ettiyapuram* v. *Chidambaram Chetty* (1) in which Sir John Wallis, C. J., states "As regards the second question section 21 forbids

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any appellate or revisional Court to allow any objection as to the place of suing unless it was taken in the original Court, and even then unless there was a consequent failure of justice. The effect of the section, in my opinion, is that objections which the appellate or revisional Court is thereby precluded from allowing must be considered cured for all purposes unless taken before the passing of the decree in the original Court. The ordinary way of questioning any decree passed without jurisdiction is on appeal or in revision and if this is forbidden the Court of first instance cannot in execution do that which the appellate or revisional Court is precluded from doing." And I may add that neither can a Court of collateral jurisdiction in a subsequent suit between the same parties. In my opinion the decrees which it is now sought to set aside were valid and binding and these appeals should be dismissed with costs against the appellants. The respondents are entitled to one set of costs only in the two appeals.

ADAMI, J.—I agree.

Appeals dismissed.

PRIVY COUNCIL.

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Nov., 11.

RAMANANDI KUER
v.
KALAWATI KUER.

Probate and Administration Act (V of 1881) section 50—Revocation of Probate—Defective Citation—Minor and Pardanashin Widow—Absence of Opportunity to oppose Grant—Genuineness of Will—Onus of Proof.

Upon an application under section 50 of the Probate and Administration Act, 1881, to revoke a grant of probate on the grounds (1) that persons who ought to have been cited were not cited, and (2) that the will was a forgery, if the first ground is established the onus is upon the opposite party to prove that the will is genuine.

The citation of the pardanashin widow of a testator and his infant daughter is defective where, although the receipt of a notice has been acknowledged on behalf of the widow, it

*Present: Lord Sinha, Lord Blanesburgh and Sir John Wallis.