

## LETTERS PATENT APPEAL.

Before Shadi Lal C. J. and Broadway J.

BARKAT ALI (DEFENDANT) Appellant

versus

KARIM BAKHSI (PLAINTIFF)  
FATTEH MUHAMMAD AND } Respondents  
OTHERS (DEFENDANTS)

Letters Patent Appeal No. 47 of 1928.

*Civil Procedure Code, Act V of 1908, Section 11: Res judicata—as between co-defendants in previous suit—Explanation VI—applicability of—test.*

*Held*, that a matter may be *res judicata* as between co-defendants if there is a conflict of interests between them *inter se* and it is necessary to adjudicate upon that conflict in order to give the plaintiff appropriate relief; and the Court determines the question between the co-defendants. Explanation VI to Section 11 of the Civil Procedure Code applies to the persons who are not actually parties to the previous suit but are constructively held to be parties, because they were interested in the right which was claimed in that suit in common for all the persons interested therein.

*Held also*, that it is the identity of the matter directly and substantially in issue that is the test of *res judicata* and not the identity of the causes of action.

*Tarini Charan Bhattacharya v. Kedar Nath Haldar* (1), referred to.

*Appeal under clause 10 of the Letters Patent from the decree of Zafar Ali J. passed in C. A. No. 1337 of 1927, on the 22nd December, 1927, reversing that of Malik Ahmad Yar Khan, Additional District Judge, Jullundur, dated the 21st March, 1927 (which reversed that of Lala Brij Lal, Subordinate Judge, 4th class, Jullundur, dated the 11th October, 1926), and granting the plaintiff a decree for joint possession against*

*defendant No. 1 in respect of one-fourth share of the land in suit on payment of Rs. 125 to defendant No. 1 on account of the well, and dismissing the suit regarding the house.*

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FAQIR CHAND, for Appellant.

J. L. KAPUR, for Badri Das, for Plaintiff-Respondent.

SHADI LAL C. J.—On the 7th April, 1888, one SHADI LAL C. J. Hadi gifted an occupancy holding to Nur Ilahi, the father of the contesting defendant, Barkat Ali. It is common ground that one-half of the holding which belonged originally to Hadi's brother Shadi, was inherited on the latter's death by Hadi. Hadi was a sonless proprietor, and he gifted the estate to Nur Ilahi, because the latter had married *Mussammatt* Jhando, the daughter of his brother Shadi. It appears that *Mussammatt* Jhando and her sons died in the life time of Nur Ilahi, and the defendant Barkat Ali is his son by his second wife.

In 1915, Nur Ilahi died, leaving him surviving Barkat Ali, who succeeded to the occupancy holding. In April, 1923, Umra, a collateral of Hadi, brought an action for the recovery of the entire holding, and impleaded as defendants in that suit, not only Barkat Ali, but also the present plaintiffs who too were reversioners of the deceased Hadi. These reversioners as well as the then plaintiff contested the right of Barkat Ali to succeed to the occupancy holding on the ground that the gift by Hadi in favour of Nur Ilahi was for the benefit of Shadi's daughter *Mussammatt* Jhando and her sons, and that on their death the property reverted to Hadi's collaterals. There was an issue on the subject, and it was decided against Barkat Ali, with the result that Umra's suit was decreed to the

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extent of one-fourth share of the holding, the remaining three-fourths being the share of the other collaterals.

The present action was brought in 1924 by two other collaterals of Hadi, and the question arises whether the decision in the former suit that on the death of Nur Ilahi the property reverted to the donor's heirs operates as *res judicata*. It is to be observed that the present plaintiffs were defendants in the previous suit, but it cannot be seriously disputed that a matter may be *res judicata* as between co-defendants, if there is a conflict of interests between them *inter se* and it is necessary to adjudicate upon that conflict in order to give the plaintiff appropriate relief, and the Court determines the question between the co-defendants. All these conditions have been satisfied in the present case, and the decision in the previous case should operate as *res judicata*. The learned Single Judge has referred to Explanation VI to section 11 of the Civil Procedure Code, but that Explanation applies to the persons who are not actually parties to the previous suit but are constructively held to be parties because they were interested in the right which was claimed in that suit in common for all the persons interested therein. As pointed out above, the present plaintiffs were actually defendants in the previous suit, and it is, therefore, unnecessary to invoke the Explanation.

The learned counsel for Barkat Ali, however, contends that the decision in the former suit was wrong in law, and that an issue of law wrongly decided does not operate as *res judicata*. A perusal of the language of section 11, Civil Procedure Code, shows that there is no distinction between an issue of fact and an

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issue of law, but it must be conceded that there are some judgments to the effect that, if the causes of action in the two suits are different, an erroneous decision on a question of law may not operate as *res judicata*. There are, however, judgments which take a contrary view—*vide. inter alia, Tarini Charan Bhattacharya v. Kedar Nath Halidar* (1). It was pointed out in that judgment that it was the identity of the matter directly and substantially in issue that was the test of *res judicata* and not the identity of the causes of action. In the present case we have not only the identity of the matter in issue, but also the identity of the causes of action; and there is no reason for excluding the operation of the rule of *res judicata*. Nor is there any valid ground for holding that the decision in the previous suit was erroneous in law.

For the foregoing reasons I would affirm the judgment of the Single Bench and dismiss the appeal with costs.

BROADWAY J.—I concur.

BROADWAY J.

*N. F. E.*

*Appeal dismissed.*

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(1) (1929) I. L. R. 56 Cal. 723.